

# State Violence in Greece

## An Alternative Report to the United Nations Committee Against Torture

33<sup>rd</sup> Session



### SOKADRE

Coordinated Organizations and  
Communities for Roma Human  
Rights in Greece



*Centre for Research and Action on Peace  
(KEDE)*



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MINORITY  
RIGHTS  
GROUP - GREECE



Athens and Geneva, 27<sup>th</sup> OCT. 04

## Foreword:

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Writing alternative reports is one of the main activities of the World Organisation Against Torture (OMCT) and a vital source of information for the members of the Committee Against Torture. With these reports, it is possible to see the situation as objectively as possible and take a critical look at government action to eradicate torture and other cruel, inhuman or degrading treatment.

Under the aegis of the European Union and the Swiss Confederation, the "Special Procedures" programme presented this report on state violence and torture in Greece at the 33<sup>rd</sup> session of the Committee Against Torture.

This report was jointly prepared by five national human rights non-governmental organisations (NGOs) in collaboration with OMCT:

- ❖ The **Centre for Research and Action on Peace (KEDE)**, a women's NGO, was founded in 1988. The goals of KEDE are: Promotion of peace and of a peace culture, protection of human rights, of life and the environment, empowerment of women, social inclusion, public health, prevention and combating of trafficking in human beings.

The list of current projects include **WINPEACE** (Greek-Turkish Women's Peace Initiative, established in 1998) [www.winpeace.net](http://www.winpeace.net); **STOPNOW** (Stop Trafficking of People Now, established in 2001) [www.stop-trafficking.org](http://www.stop-trafficking.org); **Women's Training Centre in Afghanistan** (established in 2003); **LetUsIn (Empowerment of Socially Excluded Women in Georgia)**, established in 2003 [www.letusin.org](http://www.letusin.org); **Muslim Women in Thrace** (Northern Greece); **SEE Health** (South-Eastern Europe Health Promotion Network), June 2001 – February 2004 [www.seehealth.org](http://www.seehealth.org)

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- ❖ The **Coordinated Organizations and Communities for Roma Human Rights in Greece** (SOKADRE) is a network founded in 2001 by a score of Roma communities or organizations and Greek NGOs that have been working on Roma rights. It advocates for and litigates on the rights of the destitute Roma of Greece, mainly in the areas of housing and preventing evictions, education, access to social services, proper civil registration, and non-discrimination including fighting racial profiling by law enforcement agencies. It operates through a network of volunteer representatives in the 29 member communities and in several other non-member communities.

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- ❖ **Greek Helsinki Monitor (GHM)**, founded in 1993, is non-governmental organization that monitors, publishes, lobbies, and litigates on human and minority rights and anti-discrimination issues in Greece and, from time to time, in the Balkans. It also monitors Greek and, when opportunity arises, Balkan media for stereotypes and hate speech. It issues press releases and prepares (usually jointly with other NGOs) detailed annual reports; parallel reports to UN Treaty Bodies; and specialized reports on ill-treatment and on ethno-national, ethno-linguistic, religious and immigrant communities, in Greece, and in other Balkan countries. It operates a web site (<http://www.greekhelsinki.gr>) and two web lists covering human rights issues and comprehensive and comparable presentations of minorities in the Balkan region.

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- ❖ **Minority Rights Group - Greece (MRG-G)**, founded in 1992 as the Greek affiliate of **Minority Rights Group International (MRGI)**, has focused mostly on studies of minorities, in Greece and in the Balkans. It has prepared detailed reports on ethno-national, ethno-linguistic, religious and immigrant communities, in Greece; and on the Greek minorities in Albania and Turkey. In 1998, MRG-G co-founded the **Center of Documentation and Information on Minorities in Europe – Southeast Europe (CEDIME-SE)** which operates a web site and two web lists covering human rights issues and comprehensive and comparable presentations of minorities in the region. Between 1999-2002, MRG-G organized in Greece training and regional seminars for minorities as well as a mentoring program for tent-dwelling Roma.

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- ❖ **The Support Center for Children and Family**, established in 1997 by **Social & Education Action (NGO)**, has devoted its efforts to supporting socially excluded children (street children) and children who belong to racial, ethnic or religious minorities, as well as to those who experience family problems etc. The Center provides direct services through the Children's Day Center and the Family Center, its primary mission being to prepare both children and parents to come to terms with the necessity of school and face it constructively. The aim is for the children gradually to be integrated into society and, most importantly, made aware there are alternatives to their present condition. The Family Center is a problem-solving agency for the older family members, especially mothers, offering assistance with social, legal, health and educational matters.

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## Introduction:

### 1. Ratification of international conventional instrument on human rights Reporting history as of October 24, 2004<sup>1</sup>

Treaty body (status of ratification) entry into force	Report	Due	Received	Examined	Overdue Reports
<b>CESCR (16/05/85) 16/08/85</b>	initial	30.06.1990	17.09.2002	28.04.2004	
	Second periodic	30.06.2009			
					<b>0</b>
<b>CCPR (05/05/97) 05/08/97</b>	Initial	04.08.1998	05.04.2004	To be examined during the 82 <sup>nd</sup> session (15.03.2005- 01.04.2005 )	
	Second periodic	04.08.2003			
					<b>1</b>
<b>CAT (06/10/88) 05/11/88</b>	Initial	04.11.1989	08.08.1990	05.11.1990	
	Second periodic	04.11.1993	06.12.1993	22.04.1994	
	Third periodic	04.11.1997	29.11.1999	02.05.2001	
	Fourth periodic	04.11.2001	21.01.2002	To be examined during 33 <sup>rd</sup> session ( 15.11.2004 - 26-11-2004)	

<sup>1</sup> See also

<http://www.unhcr.ch/TBS/doc.nsf/NewhvVAlSPRByCountry?OpenView&Start=63&Count=15&Expand=68#68>

	Fifth periodic	04.11.2005			
					0
<b>CEDAW (07/06/83) 07/07/83</b>	Initial	04.07.1984	05.04.1985	31.03.1987	
	Second periodic	07.07.1988	01.03.1996	28.01.1999	
	Third periodic <sup>2</sup>	07.07.1992	01.03.1996	28.01.1999	
	Fourth periodic	07.07.1996	19.04.2001	19.08.2002	
	Fifth periodic <sup>3</sup>	07.07.2000	19.04.2001	19.08.2002	
	Sixth periodic	07.07.2004			
					1
<b>CERD (18/06/70) 18/07/70</b>	Initial	19.07.1971	07.07.1971	13.08.1971	
	Second periodic	19.07.1973	17.12.1973	02.04.1974	
	Third periodic	19.07.1975	16.01.1976	31.03.1976	
	Fourth periodic	18.07.1977	01.07.1978	04.04.1979	
	Fifth periodic <sup>4</sup>	19.07.1979	21.07.1979	03.04.1980	
	Sixth periodic	19.07.1981	18.08.1981	13.08.1982	
	Seventh periodic	19.07.1983	30.07.1984	14.05.1985	
	Eighth periodic	09.07.1985	07.08.1991	04.08.1992	
	Ninth periodic	19.07.1987	07.08.1991	04.08.1992	
	Tenth periodic	19.07.1989	07.08.1991	04.08.1992	
	Eleventh periodic	19.07.1991	07.08.1991	04.08.1992	
	Twelfth periodic	18.07.1993	09.03.2000	06.03.2000	
	Thirteenth periodic	08.07.1995	09.03.2000	16.03.2000	

<sup>2</sup> The second and third periodic reports were submitted together as one document

<sup>3</sup> The fourth and fifth periodic reports were submitted together as one document

<sup>4</sup> The eighth, ninth, tenth and eleventh periodic reports were submitted together as one document



	Fourteenth periodic	18.07.1997	09.03.2000	16.03.2000	
	Fifteenth periodic <sup>5</sup>	18.07.1999	09.03.2000	16.03.2000	
	Sixteenth periodic <sup>6</sup>	18.07.2003			
	Seventeenth periodic	18.07.2003			
					2
<b>CRC (11/05/93) 10/06/93</b>	Initial	09.06.1995	14.04.2000	16.01.2002	
	Second periodic	09.06.2000			
					1
<b>CRC OPT AC (22/10/2003) 22/11/2003</b>	Initial	22.11.2005			
					0
<b>CRC OPT on the Sale of Children, Child prostitution and Child Pornography</b>	<i>(07/09/2003) Greece is a signatory only</i>				
<b>Total overdue reports</b>					5

<sup>5</sup> The twelfth, thirteenth, fourteenth and fifteenth periodic reports were submitted together as one document

<sup>6</sup> In its concluding observations adopted on 22 March 2001, the Committee on the Elimination of Racial Discrimination requested that the sixteenth periodic report be submitted jointly with the seventeenth periodic report, due on 18 July 2003

**2. Other treaty ratified without reporting obligation**

<b>Other treaties</b>	<b>Ratification</b>	<b>Entry into force</b>
<b>Optional protocol to the International Covenant on Civil and Political Rights</b>		
	<i>(05.05.1997)</i>	<u><i>05.05.1997</i></u>
<b>Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the Death Penalty</b>		
	<i>(05.05.1997)</i>	<u><i>05.05.1997</i></u>
<b>Optional Protocol to the Convention on the Elimination of all forms of discrimination against women</b>		
	<i>(24.01.2002)</i>	<u><i>24.04.2002</i></u>
<b>Rome Statute of the ICC</b>		
	<i>(15.05.2002)</i>	<u><i>01.07.2002</i></u>

# Part I: State Violence in Greece

## Introduction: Denial and Impunity

*"It is concluded at the end of the report drawn up by the Ministry of Public Order that "the Committee's observations in respect of investigation methods, torture and ill-treatment are without foundation and **it is also a fact that questions of torture or ill-treatment of persons cannot arise in respect of Greece** .....".[emphasis added] In the CPT's opinion, that conclusion is untenable. The sheer number of allegations of ill-treatment by the police and their consistency as regards both the types of ill-treatment inflicted and the categories of detained persons to whom they are applied are striking... [and lead the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) to conclude that]... **certain categories of persons deprived of their liberty by the police in Greece (in particular, persons arrested for drug-related offences; persons arrested for serious crimes such as murder, rape, robbery, etc.) run a significant risk of being ill-treated, and that on occasion resort might be had to methods of severe ill-treatment/torture.**" [emphasis in the original]<sup>7</sup>*

*"In the case of important complaints against police officers, the administrative inquiries that were carried out always conclude with the stereotypical and laconic statement that 'the actions – the behavior of police officers ... was impeccable and in conformity with the rules and regulations of the Force'. In particular, the Ombudsman, in the framework of the investigation of a significant number of complaints, has asked for administrative inquiries of cases related to violations of fundamental rights of citizens, mostly during their arrest, transfer to and detention in police stations. In such cases there has been particular irresolution in the attribution of disciplinary responsibility." <sup>8</sup>*

More than ten years following the first above dictum by the Council of Europe's Committee for the Prevention of Torture, the Greek government continues to persistently deny that members of the Hellenic Police Force or other branches (such as the Hellenic Army or the Hellenic Coast Guard) could be implicated into incidents of torture and ill-treatment, especially against members from particular minority or ethnic groups. Thus, when presented with numerous allegations of torture and / or ill-treatment by the CPT in 1993, the Greek state merely contended that "...questions of torture or ill-treatment of persons cannot arise in

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<sup>7</sup> See *Report to the Government of Greece on the Visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)*, from 14 to 26 March 1993, paragraph. 25, available at <http://www.cpt.coe.int/documents/grc/1994-20-inf-eng.htm>

<sup>8</sup> The Greek Ombudsman *Annual Report 2000*, National Printing House: Athens, 2001 p 90.

*respect of Greece*" (see excerpt above). In the same vein, the then alternate Foreign Minister Elisabeth Papazoi made in 2000 the sweeping statement that *"Greece has nothing to fear in the area of human rights protection; evidence of that is that in our country no major human rights violations are observed or denounced."*<sup>9</sup> Other state officials have openly discounted the validity of allegations of torture and / or ill-treatment, by making statements amounting to racial profiling. Thus, in 1997, while commenting upon claims of abuse against Roma during a police raid in a Romani settlement in Ano Liosia, Athens, the then minister of Public Order, Mr. George Romaios, commented that *"We should all be sceptical about what Gypsies say."*<sup>10</sup> More recently, and following the 2002 publication of a joint Amnesty International / International Helsinki Federation (AI/IHF) joint report on ill-treatment and the abuse of firearms in Greece, the then Deputy Minister of Public Order, Evangelos Malesios, challenged the allegations of police violence by stating that, *"... allegations making up the results of the Report are based on claims of people who have broken the law and it is, therefore, possible that these allegations are the product of an unreliable behaviour and mentality."*<sup>11</sup>

This reluctance on the part of the Greek state to acknowledge and address human rights violations is also evinced by the Greek state's responses to various international bodies adopting a largely self-praising attitude, while failing to provide the information requested which would enable the international community to assess Greece's degree of conformity with its obligations under international treaty law. Thus, although the Committee Against Torture (CAT) called upon Greece to provide *"...comprehensive information..."* concerning specific articles of the Convention Against Torture and other cruel, inhuman or degrading treatment or punishment, such as Articles 3 (non-refoulement) and 12 and 13 (prompt and impartial investigation into allegations of torture and effective recourse, respectively),<sup>12</sup> the Greek state's answers, contained in its Fourth Periodic Report to CAT, were to the effect that the Greek police officers *"...struggle day and night, in adverse and sometimes unpredictable conditions, to enforce the laws and secure conditions of order and unhindered social coexistence. (...) At the same time, Greek police officers have proved by their behaviour that they respect the rule of law and the human rights of citizens which they make every effort to safeguard."*<sup>13</sup> On the implementation of Article 3, the Greek state merely noted that *"In accordance with the Convention, in the case of an individual's extradition to another country, the Ministry of Justice will not proceed with that action if there are reasonable grounds to suspect that the individual will be subjected to torture. It also does not extradite persons sentenced to capital punishment in their country."*<sup>14</sup> Similar was Greece's answer in relation to Articles 12 and 13 of the Convention, explaining that *"Any denunciation of torture falling under the authority of the Ministry of Justice is investigated by the competent prosecutors with speed and impartiality."*<sup>15</sup> Nevertheless, despite the fact that the report is rather deficient

<sup>9</sup> See statement by alternate Foreign Minister Elisabeth Papazoi, Athens based weekly newspaper "Pontiki", 9 November 2000.

<sup>10</sup> See article in European Roma Rights Center publication entitled *Roma Rights*, Spring 1997, available at <http://www.errc.org/cikk.php?cikk=1781&archiv=1>

<sup>11</sup> See Greek Helsinki Monitor Press Release, dated 26/11/2003, available at [http://www.greekhelsinki.gr/bhr/english/organizations/ghm/ghm\\_26\\_11\\_02.rtf](http://www.greekhelsinki.gr/bhr/english/organizations/ghm/ghm_26_11_02.rtf)

<sup>12</sup> See *Concluding Observations of the Committee Against Torture: Greece*, 8/5/2001, A/56/44, paragraphs 83-88, at paragraph 88(f)(iii).

<sup>13</sup> See Greek Fourth Periodic Report to UN CAT, submitted January 11, 2002, UN Doc CAT/C/61/Add.1, paragraph 5.

<sup>14</sup> *Ibid*, paragraph 55.

<sup>15</sup> *Ibid*, paragraph 57.

in terms of information provided, it concludes with the self-laudatory assertion that *"The above clearly show that the applicable legal framework of our country is sufficient and that the application of the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is fully safeguarded."*<sup>16</sup> It is noted that the Greek National Commission for Human Rights (NCHR), a consultative body to the Greek Prime Minister, criticized Greece's Fourth periodic Report to CAT for providing lengthy references to legal provisions but lacking information about their practical implementation. The NCHR, commenting more generally on Greece's reports on its compliance with international human rights treaties, noted that such reports tended to present an idealized and patriotic picture -- claiming, for example, an *"absolute respect for human rights by the police"*, which *"not only does not correspond to reality in Greece but does not correspond to [reality] in any country"*.<sup>17</sup>

The prevailing climate of denial of human rights abuses, coupled with the usually deliberately ineffective mechanisms of investigating human rights abuses (at times amounting to a concerted attempt to cover up the responsibilities of police officers), leads to widespread impunity for those public officials involved in acts of torture and inhuman or degrading treatment or punishment and to the consequent absence of a deterrent for other public officials to commit such violations.

## **1. Outline of the Greek legal and administrative framework concerning investigation into human rights abuses**

*"There are a lot of sanctioning mechanisms in Greece. There are courts, prosecutors ... have you seen them produce any results? (...) We have a very advanced legislation. Greece has a good constitution. The problem lies in its application."*<sup>18</sup>

One of the main problems of the Greek administration is the ineffective implementation of the legal framework in all walks of life, though it is undoubtedly felt more keenly in cases of human rights abuses. Indeed, as the CAT has noted, *"...although the domestic legislation provides a satisfactory framework for protecting human rights in general and of certain Convention rights in particular, difficulties in effective implementation, which may amount to a breach of the Convention remain..."*<sup>19</sup> In addition, the "negationist" climate is also responsible to a large extent for the fact that, the investigating and sanctioning mechanisms concerning human rights abuses are outdated and fail to provide effective and adequate redress to victims.

### **1.1 Disciplinary Proceedings - the Administrative Inquiries**

Police officers or other law-enforcement (e.g. Border Guards, Special Guards, Coast Guard officers) or military (e.g. Hellenic Army soldiers) personnel, alleged to be responsible for torture or ill-treatment or charged in connection with other grave offences (such as unlawful killings) may be subject to a form of internal

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<sup>16</sup>Ibid, paragraph 83.

<sup>17</sup>See National Commission for Human Rights *Report 2001*, National Printing House: Athens, 2002, p.229.

<sup>18</sup>Interview to Athens based weekly newspaper *Ethnos on Sunday* (13/4/2003) by the new Greek Ombudsman, Professor George Kaminis.

<sup>19</sup>See *Concluding Observations of the CAT: Greece*. 8/5/2001, A/56/44, paragraphs 83-88, at paragraph 87.

inquiry, known as the Administrative Inquiry, within the framework of disciplinary proceedings.<sup>20</sup>

Briefly, when one of the higher ranking officials of the Ministry of Public Order and of the Hellenic Police Force (ranging from the Minister to the Police Directors of Police Directorates) is informed of an allegation against a police officer, s/he can order a preliminary investigation (hereinafter PI) into the allegation to ascertain its veracity.<sup>21</sup> The launching of a preliminary investigation does not amount to a disciplinary indictment of the police officer concerned. Should the official who ordered the preliminary investigation conclude that the allegations are well-founded, then he/she can initiate disciplinary proceedings against the police officer, either by issuing a direct summons to the police officer to present his/her plea (in the form of a written defence memorandum)<sup>22</sup> or by ordering the launching of an Administrative Inquiry into the allegations. In some cases, an Administrative Inquiry is launched immediately after the allegation or the incident. There are, in fact, two kinds of administrative inquiries, the Oral Administrative Inquiry and the Sworn Administrative Inquiry (SAI). Oral Administrative Inquiries (hereinafter OAI) are launched in cases where the alleged offence incurs the lowest disciplinary penalties, i.e. reprimands and fines.<sup>23</sup>

Sworn Administrative Inquiries (hereinafter SAI) are launched into allegations of more serious forms of disciplinary violations (for example, lack of respect for the Constitution, refusal to carry out a superior's orders, drunkenness on duty), that incur the heaviest disciplinary sanctions of cashiering, suspension of service by dismissal and temporary suspension from service. Among the offences that carry the disciplinary penalty of cashiering is the infliction of torture.<sup>24</sup> A mere perusal of the provisions concerning the SAI (most of which are similar to those applicable to Oral Administrative Inquiries) makes it clear that it was not meant primarily to deal with complaints by the public -- although Art. 24.1 of Presidential Decree 22/1996 in general gives precedence to the investigation of such cases. The safeguards it contains aim to protect the rights of the officer under investigation, rather than those of the complainant or the complainant's family. Thus, they include provisions to ensure the impartiality of the investigating officer; they also guarantee the right of the "accused" officer to nominate witnesses, to request a postponement of proceedings or the exclusion of the investigating officer, as well as the right of access to the evidence, and the right of appeal. At all stages of disciplinary proceedings the officer under investigation may have legal counsel present.<sup>25</sup> By

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<sup>20</sup> The disciplinary procedure for police and other law enforcement officials (with the exception of coast guard officers) is set out in Presidential Decree 22/1996 subsequently amended by Presidential Decree 31/2001 and Presidential Decree 3/2004, though the procedure concerning other branches (e.g. the army or the coast guard) is almost identical.

<sup>21</sup> Article 23.3 of Presidential Decree 22/1996, as amended. Until the amendments introduced by Presidential Decree 2/2004, the preliminary investigation was termed "unofficial investigation".

<sup>22</sup> See Articles 22.2.a and 25.1 of Presidential Decree 22/1996. This form of disciplinary proceedings applies only to disciplinary offences incurring the lowest disciplinary penalties, i.e. reprimands and fines (Article 3.2 of Presidential Decree 22/1996.)

<sup>23</sup> Article 26.1.a of Presidential Decree 22/1996. While the scope of application of both direct summons and Oral Administrative Inquiry is the same (offences incurring the lowest disciplinary penalties), direct summons are issued when the disciplinary liability of the police officer concerned is beyond dispute and hence there is no need to conduct an administrative inquiry.

<sup>24</sup> Under Article 9.1.c of Presidential Decree 22/1996: "The infliction of torture, any physical injury or damage to health, the exercise of psychological violence and any other act or conduct which constitutes a serious offence against human dignity, whether [perpetrated] on or off duty" is punished by cashiering from the [police] service".

<sup>25</sup> Article 10.2 of Law 2713/1999.

contrast, there are no provisions setting out the rights of the complainant. Additionally, the complainant does not have the right of access to the hearings, and cannot appeal against the inquiry's findings. In common with the other forms of inquiry (PI and OAI), he/she only has the right to be informed of the Sworn Administrative Inquiry's outcome. However, this often consists of a mere paragraph, in which both the type of the inquiry held (PI, OAI or SAI) and the outcome are mentioned, without any reference as to the type of disciplinary penalties (if any) imposed. The complainant is not entitled to ask for copies of documents collected in the framework of the SAI. By way of example, on May 10, 2004, Greek Helsinki Monitor (GHM) asked by letter to the Hellenic Police to be informed whether a SAI had taken place in relation to the alleged ill-treatment of three Albanian nationals in the Greek-Albanian border on September 15, 2003. GHM, as the authorised representative of the Albanian nationals, also called for the disclosure of SAI documents, should a SAI have been held. On June 28, 2004, GHM was informed by the Hellenic Police that a SAI had been held (without specifying if it was held shortly after the incident or only after the GHM letter)<sup>26</sup> and that no police officer was found liable of having committed a disciplinary offence. GHM was also informed that it was not entitled to receive any SAI related documents (not even the Report on the Findings of the SAI, see following paragraph).<sup>27</sup>

Regarding the way SAIs are held, the procedure is broadly similar with certain distinctive characteristics to the one of OAIs. Thus, SAIs are authorised by the same officials of the Ministry of Public Order and the Hellenic Police Force. A SAI however, can only be entrusted to a police officer of superior rank to the officer under investigation<sup>28</sup> while an OAI can be entrusted to a police officer of higher seniority but of the same rank.<sup>29</sup> Evidence is taken under oath, while the proceedings are in writing and are confidential in nature. At the end of the inquiry, the officer in charge of the SAI draws up a report (called *Report on the Findings of the SAI*) with a summary and assessment of the evidence, his/her conclusions and a recommendation (proposal) as regards any penalty to be imposed. The report is then submitted to his/her superiors for review before being forwarded to the authority competent to make a decision. Thus, this authority can be the Minister of Public Order, in cases where the police officer concerned is a Lieutenant General of the Hellenic Police Force, or it can be a General Police Director, for police officers under his/her command.<sup>30</sup> The competent authority is not bound to accept the recommendation on the penalty to be imposed contained in the report and can reject or modify it. Should it decide that the police officer should be fined or reprimanded, then it can proceed to impose the appropriate penalty. If the competent authority however decides that the appropriate penalty for the police officer concerned is either cashiering or suspension of service by dismissal or temporary suspension from service, then it must forward the SAI file to the competent Police Disciplinary Board<sup>31</sup>. These Boards are composed of police officers. Depending upon the Police Disciplinary Board to which the case was

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<sup>26</sup> In certain cases, the SAIs have been launched a long time after the alleged ill-treatment, thus resulting in the unavailability of crucial evidence such as victim testimonies etc.

<sup>27</sup> See Letter from the General Police Directorate of Central Macedonia, Ref. No. 6004/15/130-η, dated June 28, 2004.

<sup>28</sup> Article 27.3 of Presidential Decree 22/1996.

<sup>29</sup> Article 26.2 of Presidential Decree 22/1996.

<sup>30</sup> Article 31.1 of Presidential Decree 22/1996.

<sup>31</sup> Under Article 35.1 of Presidential Decree 22/1996 they are the only bodies that can impose such disciplinary measures.

referred (which in turn depends upon the rank of the disciplinarily indicted police officer), there might be a right of appeal before a Second Instance Police Disciplinary Board, whose decision is final. Again, the complainant is not informed, nor can s/he be represented or take part in the Disciplinary Boards' proceedings.

## **1.2 Concerns about the impartiality and objectivity of Administrative Inquiries: "Police solidarity"**

According to Art 27.1.a of Presidential Decree 22/1996, SAIs are to be launched, *inter alia*, into allegations of torture and / or ill-treatment by police officers. While according to the Hellenic Police Headquarters, SAIs are conducted in a manner similar to judicial ordinary investigations<sup>32</sup> (the implication here being that SAIs are impartial and objective), NGO monitoring has demonstrated that the inherent weaknesses of SAIs often lead either to the dropping of disciplinary charges against police officers or to the imposition of light penalties, thus depriving them of any real deterrent effect.

The most important shortcoming of SAIs is that they are a "closed", internal police procedure, in which the complainant does not effectively participate ; his/her only contribution is limited to his/her testifying if summoned to do so in the framework of the SAI. There are additional considerations regarding the impartiality of SAIs, as police officers will be examining the legality of actions of their fellow police officers. Indeed, according to the joint AI/IHF report, "*Corporate solidarity exists in all professions and has many positive aspects. However, a misguided sense of solidarity sometimes leads members of a profession to close ranks when a colleague is exposed to what may be justified public criticism.*"<sup>33</sup> Furthermore, police officers conducting SAIs are not relieved of their other, everyday duties<sup>34</sup> which presents problems as the police officer might spend a sizeable part of his everyday duties together with the police officer against whom the SAI was launched. It is only recently that the Hellenic Police Force decided to impose certain restrictions. Thus, following the amendment of Presidential Decree 22/1996 by Presidential Decree 3/2004 (which came into force on January 9, 2004), directors of police directorates cannot order a SAI into allegations of torture and / or ill-treatment committed by their subordinate police officers. In such cases, the conducting of the SAI should be entrusted to a police officer serving in a different police directorate.<sup>35</sup>

The increased number of complaints concerning police brutality led the Greek Ombudsman's Office to commission a Special Report on the issue of administrative proceedings against police officers. According to the Ombudsman's Annual Report 2003, released in March 2004, the Report on the procedures followed by police officers conducting administrative inquiries was under drafting.<sup>36</sup> It was eventually

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<sup>32</sup> See document from Hellenic Police Headquarters to the Greek Ombudsman's Office, Ref. No. 233428/6/5-μη', dated October 25, 2002. Judicial ordinary investigations are launched into alleged felonies and are the most serious form of judicial investigation. They are undertaken by judicial officers.

<sup>33</sup> See Amnesty International and Helsinki Federation for Human Rights (AI/IHF), *Greece: In the Shadow of Impunity: Ill-Treatment and the Misuse of Firearms*, 24 September, 2002, AI Index EUR 25/022/2002, p 69, available at [http://www.greekhelsinki.gr/hr/english/countries/greece/ai\\_main\\_nophotos\\_24\\_09\\_02.doc](http://www.greekhelsinki.gr/hr/english/countries/greece/ai_main_nophotos_24_09_02.doc) Page references throughout the present report to are to the electronic version.

<sup>34</sup> See document from Hellenic Police Headquarters to the Greek Ombudsman's Office, Ref. No. 233428/6/5-μη', dated October 25, 2002.

<sup>35</sup> See Articles 23.1 and 27.2 of Presidential Decree 22/1996, as amended by Presidential Decree 3/2004.

<sup>36</sup> *Annual Report 2003*, p 75.



released on October 12, 2004.<sup>37</sup> Entitled "Disciplinary – Administrative investigations into allegations against police officers", it represents a scathing criticism on the way in which the Hellenic Police deals with complaints concerning police abuse. Noting various procedural defects, ranging from the non-institution of the appropriate kind of administrative inquiry to the selective use of evidence in order to drop disciplinary charges against police officers, the Report in many ways echoes the criticisms voiced in the present report concerning the way in which administrative inquiries are held.

This is not the first time the Ombudsman's Office expresses its concerns about the way the SAIs are conducted. Commenting in its *Annual Report 1999* on a SAI held in the allegations of ill-treatment by a French citizen, the Ombudsman noted that "... during the investigation, the accusations were not investigated in detail and the conclusions were neither complete nor justified. Specifically it was found that the people conducting the investigation adopted, without second thoughts, in their conclusions the testimonies of the police officers in question without taking into account the opposite testimonies of the plaintiff and the witnesses, while some of the reported events were not investigated at all. The Ombudsman, aiming at fairly distributing the responsibilities that exist and at lifting any possible suspicions of cover-up and partiality, requested an additional investigation into the facts..."<sup>38</sup> Similarly, in the *Annual Report 2000* it was noted that: "The Ombudsman is not convinced that the administrative inquiries carried out by the Greek police on the Ombudsman's initiative to establish whether law enforcement officials have committed offences during the arrest of people, their transfer to, and detention in, a police station, are effective."<sup>39</sup> The report noted that administrative inquiries into more serious complaints against police officers "invariably come to the hackneyed and laconic conclusion that 'the activities and conduct of the police officers ... were irreproachable and in accordance with the rules and regulations of the Force'. In particular, the Ombudsman, in the framework of the investigation of a significant number of complaints, has asked for administrative inquiries of cases related to violations of fundamental rights of citizens...". Finally, in its *Annual Report for 2003*, the Greek Ombudsman's Office referred to the "...inexpediency of administrative inquiries launched by the Hellenic Police Force concerning the validation of instances of abuse of authority by police officers."<sup>40</sup>

The misconceived notion of police solidarity is also evident in other aspects of disciplinary proceedings. Under Article 14.2 of Presidential Decree 22/1996, suspension from service pending completion of the SAI is only *mandatory* for officers serving prison sentences, or who have been remanded in pre-trial custody. If a police officer is charged with a criminal offence punishable by at least three months' imprisonment but has not been remanded in pre-trial custody, or is subject to a SAI for a disciplinary violation punishable with cashiering or suspension of service by dismissal, then his suspension is, under Art 14.1, discretionary.<sup>41</sup>

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<sup>37</sup> The Report is available (in Greek) at <http://www.synigoros.gr/reports/astinomikoi.pdf>

<sup>38</sup> *Annual Report 1999*, p 102.

<sup>39</sup> *Annual report 2000*, p.52.

<sup>40</sup> *Annual Report 2003*, p 75.

<sup>41</sup> The problem would not be so pronounced if investigating judges had shown they were willing to remand police officers facing such charges into custody. Unfortunately however, this is not usually the case (see section 3.2 *infra*).

The Hellenic Police has evinced a decided tendency not to place under suspension from duty police officers who have not been remanded to custody pending trial. Thus, it did not place into suspension police officer Giorgios Tyllianakis who, on October 29, 2001, shot and killed with his service-issued firearm the 21 year-old Rom Marinos Christopoulos, in Zefyri, Athens. Following a complaint submitted by GHM on behalf of the victim's sister, the Greek Ombudsman addressed a letter to the Hellenic Police Headquarters, not only noting that the Hellenic Police should have placed the police officer under suspension but also expressing concerns over the fact that, while any other civil servant facing felony charges would have been placed under mandatory suspension, the Hellenic Police appeared to reserve a sphere of discretionary power on issues of suspension.<sup>42</sup> In response, the Hellenic Police argued, in a technical interpretation of the decree's provisions, that as police officer Giorgios Tyllianakis had not actually been remanded into custody,<sup>43</sup> it was Article 14.1 and not Article 14.2 which was applicable. Yet as it has been seen, Article 14.1 places the issue of suspension in the field of discretionary power of police authorities.<sup>44</sup> In its reply, the Ombudsman's Office insisted that the police officer should have been suspended from service, even under Article 14.1 and maintained that the interpretation espoused by the police was partly flawed.<sup>45</sup> Less than a month later, the Hellenic Police exercising its discretionary powers under Art 14.1, did not suspend from duty police officer Ioannis Rizopoulos, who on November 21, 2001, shot and killed 20 year old Albanian immigrant Gentjan Çelniku in the centre of Athens. Meanwhile, on November 13, 2001, the Hellenic Police suspended from duty the police officer Michalis Lagios who had been arrested on drug-related charges (he was found in possession of 1,5 grams of hashish).<sup>46</sup>

It is noted that in certain (extremely rare) occasions, even police officers have explicitly challenged the impartiality of SAIs. Thus, on October 14, 2003, the boards of the Pan-Hellenic Federations of personnel serving in the police, fire brigade and coast guard adopted a joint decision concerning their actions following the violent breaking up of their demonstration on October 9, 2003. They called, inter alia, upon the Chief of the Hellenic Police to order a SAI into the events and entrust it to a police officer not serving in the General Police Directorate of Attika, to ensure "...the impartiality of the [investigative] procedures be followed."<sup>47</sup> Similarly, while interviewed on an incident of police ill-treatment that took place on the island of Rhodes on July 6, 2001, Mr. Christos Fotopoulos, then Vice President of the Confederation of Police Officers heavily criticized the disciplinary system of the Hellenic Police noting that Hellenic Police disciplinary bodies hold the inquiries in a way that produces the outcome that has been called for by higher echelons of the Hellenic Police.<sup>48</sup> The importance of properly held SAIs is all the more clear as their outcome is likely to influence judges and prosecutors alike (e.g. see the Argostoli case, section 2.3.a infra). The SAIs importance has also gained a

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<sup>42</sup> The letter containing the views of the Ombudsman's Office was addressed to *GHM* and *MRG-G* (Ref No 1767/01/2.2, November 22, 2001) but was also forwarded to the General Police Director of Attica (Ref No 1767/01/2.3, November 22, 2001).

<sup>43</sup> Indeed, on October 26, 2001, the Investigating Judge had ordered the release of police officer Giorgios Tyllianakis on a 3 million drachmas (roughly 8,700 euros) bail.

<sup>44</sup> Letter from the Hellenic Police Force Headquarters, Personnel Branch, Ref. No 249072/6/8-23, December 5, 2001.

<sup>45</sup> Letter from the Ombudsman's Office to the Hellenic Police Force Headquarters, Personnel Branch, Ref. No 1767/01/2.4, December 21, 2001.

<sup>46</sup> Article in Greek at *Macedonian Press Agency* (<http://www.mpa.gr>), November 16, 2001

<sup>47</sup> See joint decision available in Greek at [http://www.explo.gr/qu\\_article/031017004/darticle](http://www.explo.gr/qu_article/031017004/darticle)

<sup>48</sup> Interview of Mr. Fotopoulos to *Flash* 9.61 radio station journalist Yannis Roubatis, on July 10, 2001.

statutory basis since prosecutors can now refrain from calling for the holding of a “preliminary inquiry” into allegations if a SAI has been held and has concluded that there is disciplinary liability on the part of police officers; in that case, they can press charges directly on the basis of the SAI findings.<sup>49</sup>

The establishment in 1999 of a special police body, the “Internal Affairs Directorate”, that had the authority to investigate serious allegations, including, inter alia, torture and ill-treatment, was a step in the right direction. This police body has in fact been so successful that its mandate has been extended<sup>50</sup> and is now responsible for investigating serious offences allegedly committed by any public official. In relation to alleged police abuses however, its mandate is limited as the “Internal Affairs Directorate” is not engaged into SAIs nor can it investigate whether a SAI was held properly. In cases where a SAI has been launched, the only action it can take is to forward a copy of the penal brief, if any, to the Hellenic Police Headquarters, which will then decide upon the institution of disciplinary proceedings against the police officer concerned.<sup>51</sup> Yet, the “Internal Affairs Directorate” is not known to have ever launched a criminal investigation into an allegation of torture.

## **2. Norms and Practices in relation to the judicial process**

### **2.1 Criminal proceedings into allegations of torture / ill-treatment**

The following summary of the Greek penal system is to be found into Greece’s *Core Document forming part of the reports of states parties* (hereinafter the Core Document):<sup>52</sup>

*In principle, the public prosecutor has the duty to prosecute every offence that has been reported to him/her. The public prosecutor is considered as an objective authority. He also has the duty to uphold legality, to protect the citizens and to safeguard the rules of public order. He/she may order an ordinary investigation, carried out by the investigating judge, or a summary investigation (in the case of misdemeanours), carried out by general or specialized investigating officers; he/she may summon the accused directly before the trial court; he/she may proceed to a preliminary inquiry. Proceedings in this case are to be held in writing and in secrecy. When the ordinary investigation is completed, the case must be referred to the judicial council with a motion either to refer the case to trial or to acquit. The judicial council is a panel of judges deciding in camera. Their decisions must be reasoned. This procedure is similar to the one before ordinary courts.*<sup>53</sup>

The importance of the role of the prosecutors cannot be overemphasised. Put rather crudely, they are the ones who will frame the defendant’s actions in legal terms and will institute criminal proceedings against him. They also have the

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<sup>49</sup> Art 43.1 of the Criminal Code of Procedure, as amended by virtue of Law 3160/2003.

<sup>50</sup> By virtue of Law 3103/2003.

<sup>51</sup> See letter from the Hellenic Police Headquarters to GHM, Ref. No. 233428/6/5-ξστ’, dated December 15, 2003.

<sup>52</sup> UN doc. HRI/CORE/1/Add.121 7 October 2002.

<sup>53</sup> Core Document, op.cit., paragraph 16.

authority to call for the forensic examination of an alleged victim. They will supervise the gathering of all evidence and will decide if the defendant will be referred to trial or not. If they believe that they have gathered enough evidence to indict an individual for a misdemeanour offence, then they can refer the defendant directly to court, often bypassing the judicial councils procedure. If the evidence is not adequate, then they (the prosecutors) will shelve the case or refer it to the competent judicial council, recommending the quashing of charges.

## **2.2 Deficiencies of criminal investigations into allegations of torture / ill-treatment.**

According to Professor Dionysios Spinellis: "... *public prosecutors in Greece have under the Constitution the same status of personal independence as judges (...), their mentality is that of an independent member of the judiciary rather than of a partisan lawyer.(...) Furthermore, public prosecutors, due to their heavy case-load, do not have the time to prepare the cases with the same diligence as a counsel of the defendant or of the civil claimant would.*"<sup>54</sup> Their role as an "*independent member of the judiciary*" is also attested symbolically by the fact that the prosecutors enter and leave the court room together with the judges (and, if applicable, the jury) and that they sit next to the judges on the bench throughout the judicial proceedings.

Under the Code of Criminal Procedure, police officers who are carrying out a preliminary inquiry or a summary investigation are subject to the instructions and supervision of the prosecutor, who is entitled to attend interrogations in person or by deputy, and to have access to all the documents in the case file.<sup>55</sup> However, the Ministry of Public Order, in a response to the CPT, pointed out the impossibility for prosecutors, given their limited numbers, to attend all interrogations.<sup>56</sup> Moreover, in the Greek penal system, medical examination of an alleged victim by a forensic specialist can only be authorised either by the prosecutor or by the police which enables the latter to refrain from authorising such an examination or not to inform a victim of police abuse of the right to ask for such examination. Consequently, the only independent authority that can authorise a forensic examination is the Prosecutor's office who, in several instances refrains from authorising it.

A related issue of concern is the prosecutor's unwillingness to institute criminal proceedings under Article 137A of the Greek Criminal Code (hereinafter CC). Article 137A is the *lex specialis* penalising acts of torture and other offences against human dignity.

Under the provisions of Article 137A.1: "*An official or military officer whose duties include the prosecution, interrogation or investigation of criminal offences or disciplinary offences or the execution of sentences or the guarding or custody of detainees, is punished ... if he subjects to torture, during the performance of these*

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<sup>54</sup> Professor D.Spinellis, "Victims of Crime and the Criminal Process", *Israel Law Review*, Vol.31, No.1-3, 1997, p.370.

<sup>55</sup> Articles 33.1, 243.2 and 279.1 CCP.

<sup>56</sup> See *Interim Response of the Ministry of Public Order 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 25 May to 6 June 1997*, CPT/Inf (2001) 19, p 8, paragraph 1, available at <http://www.cpt.coe.int/documents/grc/2001-19-inf-eng-1a.pdf> See also *Follow up Response of the Ministry of Public Order 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 25 May to 6 June 1997*, CPT/Inf (2001) 19, p 9, paragraph 1, available at <http://www.cpt.coe.int/documents/grc/2001-19-inf-eng-1b.pdf>

*duties, a person who is under his authority with the aim of a) extorting from this person or a third person a confession, testimony, information or statement, or the repudiation or acceptance of a political or other ideology; b) punishing; c) intimidating the person or third persons."*

Article 137A.2 defines torture as *"... any systematic infliction of acute physical pain, or physical exhaustion endangering the health of a person, or mental suffering capable of leading to severe psychological damage, as well as any illegal use of chemicals, drugs or other natural or artificial means with the aim of bending the victim's will"*.

Art 137A.3 lays down less serious cases involving *"physical injury, injury to the health, the use of illegal physical or psychological force and any other serious offence against human dignity<sup>57</sup>, which is committed by persons under the conditions and for the purposes defined [above]"*.

The penalty laid down for violation of Art 137A.1 and A.2 is five to twenty years' imprisonment and three to five years' imprisonment for violations of A.3. More serious cases of torture, such as involving the use of electro-shock are prohibited by Art 137B and are punishable by at least ten years imprisonment. In addition to the above, persons convicted of torture are automatically deprived of their political rights and dismissed from their jobs.<sup>58</sup> However, the courts have the possibility to impose a lower sentences when there are mitigating circumstances (Art 83 and 84 CC). This may amount, for Art 137A.3, even to suspended sentences of less than three years if the perpetrator has no prior convictions. This is what happened in the most recent case. On 15 October 2004, the Naval Military Court of Hania imposed suspended sentences to five coast guards convicted under Art 137A.3 for the ill-treatment of several asylum seekers: 30 months to one for offence to sexual dignity, one year to another for abetting the first one, and eighteen months to three others for abuse (cases 45-55 in the table at the end of this section). The Greek Criminal Code does allow for ill-treatment penalties to be suspended or even converted to fines (if lower than three years), while, for example, it considers "resisting authority" (Article 167) as one of the crimes for which the penalty (at least one year but this too is subject to the "mitigating circumstances" leniency) cannot be suspended nor converted to a fine.

The onerous consequences following a conviction for torture and a certain "leniency" towards police officers might explain –but certainly not justify– why prosecutions, let alone convictions, under Article 137A have been very rare.<sup>59</sup> It is also significant that the only two cases known to AI/IHF (in the period 1998 to the end of June 2002) in which police officers have been indicted and tried under Article 137A have conformed to the restrictive interpretation of this article; in both cases the accused police officers were acquitted (cases 1-2 and 56-57 in the table below). There have also been cases where, despite serious allegations of torture (including the use of electro-shock equipment, see the Okeke case *infra*, section 2.3.d), the prosecutor has only called for a "preliminary inquiry" into the

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<sup>57</sup> Offences against human dignity include in particular a) the use of a lie detector, b) prolonged isolation and c) a serious offence against sexual dignity.

<sup>58</sup> Articles 137A, 137B and 137C CC.

<sup>59</sup> Police and other law enforcement officials who ill-treat detainees are more likely to be charged under Article 239 or with offences such as "Bodily injury" (under Articles 308 to 310 CC), "Threat" (Article 333 CC) or "Insult" (Article 361 CC).

allegations.<sup>60</sup> The documents gathered, should the prosecutor decide to shelve the case, are not accessible to the complainant whose only right is to appeal the decision to shelve the case.<sup>61</sup>

Lastly, it should not be forgotten that prosecutors are members of the public and consequently might be influenced by widespread conceptions about the alleged “tendency to criminality” of certain minority groups. Thus, it is instructive to note the different treatment of three police officers, all of whom were involved into police fatal shooting incidents. Georgios Tylliannakis (who shot a Romani youth, Marinos Christopoulos in Zephyri, Athens on October 24, 2001), Ioannis Rizopoulos (who shot Albanian national named Gentjan Celniku in Athens on November 21, 2001) and Theodoros Katsas (who shot an ethnic Greek man Anastasios Limouras in Glyfada, Athens on 24/10/02) were all arrested and referred to an investigation after having been charged with “reckless homicide” (Article 299 of the CC). In the cases of the first two (police officers Tyllianakis and Rizopoulos) the public prosecutor’s office added the “possible intent” to the charges, whereas in the third (police officer Katsas), the public prosecutor’s office added the less incriminating characterization of “transgression of the limits of defence”. Nevertheless, police officer Katsas - against whom there was a relatively less severe charge - was remanded into custody while the other two police officers were not.<sup>62</sup> Given that all three incidents are broadly similar, it appears that the only differentiating factor was that of the victim’s ethnic/national origin.<sup>63</sup>

### **2.3 Criminal and Disciplinary proceedings against police officers involved into torture / ill-treatment allegations: three cases.**

#### **2.3.a. the “Argostoli case”**

On August 4, 2001, 18-year old Rom Nikos Theodoropoulos and three other Romani youth were taken into custody and then arrested after being accused of the theft of a large sum of money. Mr. Theodoropoulos reported to GHM that, when he refused to confess the theft, officers began punching and slapping him in the face and stepping on his feet with their boots for approximately 20 minutes. He was then placed in a detention cell and beaten to sign a deposition which was not read to him, although he is illiterate. Police had previously denied him the right to call an attorney, but put in his statement that he had waived that right. According to Mr. Stephanou, he was similarly punched and slapped hard in the face while Officer Kanellopoulos questioned him. He was subsequently set free, after police kept his cellular phone which was returned to him a few days later. The four accused Roma were acquitted in the subsequent trial of August 6, 2001. A month later Mr. Stefanou was arrested again by Officer Kanellopoulos because “...*he could not prove lawful possession of a cellular phone*” and charged in accordance with Article 394.1 (possession of stolen goods).<sup>64</sup>

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<sup>60</sup> Such inquiries are often effected by police officers (whereas logic would suggest that the officials investigating such allegations should not be police officers, for rather self-evident reasons).

<sup>61</sup> Art 48 CCP.

<sup>62</sup> The relevant article 282 of the CCP considers of course that “the seriousness of the act according to the law does not suffice on its own to justify the imposition of a remand in custody” and there must be justified fears that the defendant might flee or/and commit other crimes.”

<sup>63</sup> See October 30, 2001 *GHM* press release, entitled “Ethnically Skewed Rulings for policemen who killed a Greek, a Rom and an Albanian harm Greek Justice’s reputation”, available in English at [http://www.greekhelsinki.gr/bhr/english/organizations/ghm/ghm\\_30\\_10\\_02.rtf](http://www.greekhelsinki.gr/bhr/english/organizations/ghm/ghm_30_10_02.rtf)

<sup>64</sup> Mr. Stefanou was subsequently acquitted by the One Member Juvenile Court of Patras on February 3, 2004.

The exact date of that arrest and the constitution of the criminal file gives the impression that evidence had been manipulated to incriminate Mr. Stephanou. A Sword Administrative Investigation (SAI) on the ill-treatment claims was launched on November 21, 2001. Noting that Officer Kanellopoulos was not on duty the day he claimed he arrested Mr. Stephanou, the Cephallonia Police Directorate, Mr. Evangeloelias Moschonas, did not investigate the discrepancy but asked and obtained the September 5, 2001 roster mentioning that Mr. Kanellopoulos was on duty that day and concluded that "Mr. Stephanou was arrested on September 5, 2001."<sup>65</sup> The police criminal file on the arrest was submitted to the Patras Prosecutor as late as October 27, 2001, whereas under Article 37.1 of the Greek Criminal Procedure Code, investigating officials should "without delay" inform the competent prosecutor of all criminally sanctionable acts. Moreover, the Patras Police Directorate's Register of Occurring Crimes does not include any reference to any such arrest on September 5, which is mandatory.

In addition there is a discrepancy in Officer Kanellopoulos' testimonies. In his deposition for the SAI, he claimed that he and a colleague, received orders to proceed to the scene of a reported cellular phone theft where two "Athinganoi" had been seen.<sup>66</sup> Mr. Stephanou was not identified but still arrested, while another Romani youth evaded arrest. However in Officer Kanellopoulos's deposition in the criminal file, he does not mention receiving any orders to proceed to the area or the fact that another Romani youth evaded arrest. The case file also contains Mr. Stephanou's signature on one of the documents although Mr. Stephanou stated unequivocally that he never signed the document. During Mr. Stephanou's trial and acquittal by the One Member Juvenile Court of Patras on February 3, 2004 police officer Kanellopoulos testified as witness for the prosecution and denied having come in contact with Mr. Stephanou in the past or having seen the mobile phone in question.

The above discrepancies point to the fact that members of the Greek Police have attempted to discredit Mr. Stephanou's legal action presenting his claims as a "revenge". Had Greek Police admitted that the arrest took place after the alleged ill-treatment gained publicity, strong criticism would have arisen from the fact that authorities sought to arrest Mr. Stephanou in order to use his arrest as a bargaining chip to force him to retract his criminal complaint.

#### *Pressure to Retract Legal Action, Racial Profiling and Violation of Privacy*

A highly insidious aspect of this case relates to the many reported attempts by police officers<sup>67</sup>, between November 2001 and September 2003, to "persuade" the Roma involved to retract their allegations and in his May 5, 2003 sworn testimony, Mr. Theodoropoulos stated that, "*We were called by the Director, Moschonas,<sup>68</sup> who instructed us to say that no police officer ill-treated us and that we were only*

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<sup>65</sup> However, Mr. Stephanou's arrest took place later as he called GHM with his cellular phone, on September 5, 2001!

<sup>66</sup> "Athinganoi" is a rather pejorative term used almost always by police to refer to Roma in Greece.

<sup>67</sup> *Contrary to the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (supported by UN General Assembly Resolution 55/89 and UN Commission of Human Rights Resolution 2000/43), the police officers "...potentially implicated in ... ill-treatment were not removed from any position of control or power ... over complainants etc."*

<sup>68</sup> Mr. Moschonas served as Deputy Director of the Cephallonia Police Directorate and conducted the SAI into the allegations of ill-treatment by Mr. Stephanou and Mr. Nikos Theodoropoulos.

*slapped a couple of times, as usual. I had to withdraw the allegation because I am a permanent resident here and I am afraid.*" Following the withdrawals of the complaints, he concluded the SAI, on May 15, 2002, arguing that these allegations were "manifestly unfounded" and recommended no disciplinary action be taken.

GHM also found racial profiling in the defense memorandum attached to Lieutenant Choraitis's September 10, 2003 deposition testimony to the investigative judge stating that, "[his] unremitting professional activities have had as a result the containment of the aforementioned criminal behavior of those [two Romani women including Ms Maria Stephanou, Theodore Stephanou's sister and wife of Mr. Theodoropoulos] as well as others of their race and their relatives", characterizing them "as a profession engaged in theft", demonstrating "anti-social behavior...". Lieutenant Choraitis also submitted 12 standardized police documents to the investigating judge which concern Argostoli Roma. It is believed that these documents were submitted merely to support Lieutenant Choraitis' claims that the four Roma were habitual delinquents. GHM submitted a complaint to the Greek Data Protection Authority (DPA) on November 10, 2003, alleging that the aforementioned practice amounts to a grave violation of protection of sensitive personal data.<sup>69</sup>

#### *Seeking Administrative and Criminal Investigation of Apparent Cover-Up*

GHM drafted a memorandum outlining the many contradictions cited previously forming the basis of its criminal complaint submitted on September 4, 2003, to the Misdemeanours Prosecutor of Cephallonia against 11 officers serving in Patras and Cephallonia. According to Articles 31 and 43 of the newly amended Code of Criminal Procedure, a preliminary examination should have been ordered and completed within four months. On November 10, 2003, GHM addressed a letter to the Greek Minister of Public Order Mr. Giorgos Floridis requesting that the officers referred to in the memorandum be either suspended from duty or transferred from Cephallonia. In addition, GHM called on Mr Floridis to order an investigation into the allegations, as well as into the violation of the Privacy Law, and to assign it to the Internal Affairs Directorate of Hellenic Police (ELAS).<sup>70</sup> Hellenic Police Headquarters on December 15, 2003 refused. On January 18, 2004, merely informal and non independent investigations<sup>71</sup> were launched and were to be carried out by the Police Directorates of Cephallonia and Achaia, even though the Director of the first and high-ranking officers of the second were allegedly implicated. On April 23, 2003, the Ombudsman had asked ELAS for the complete file of the SAI so as to investigate GHM's cover-up charges. This file was sent to the Ombudsman soon after, but, despite repeated updates and requests sent by GHM, he has not even acknowledged receipt of these documents and is not known to have taken any action eighteen months later.<sup>72</sup> In fact, as indicated in the

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<sup>69</sup> This may constitute a violation of Article 2(b) of Law 2472/97 on the Protection of Sensitive Private Data, under which data concerning criminal convictions or criminal proceedings launched against a person are considered "sensitive data" and are therefore protected from unwarranted disclosure

<sup>70</sup> The Internal Affairs Directorate has been exceptionally effective in bringing to light cases of corruption within the police force and has been assigned the task of investigating all corruption allegations within the entire Greek civil service. Cases of death, injuries or ill-treatment at the hands of Hellenic Police do not currently fall within its mandate, though it appears that it was initially meant to deal with such cases.

<sup>71</sup> It usually means that implicated police officers report on the charges to their superior officer and no outsider is examined.

<sup>72</sup> A collateral consequence was that the unchallenged SAI was used by the courts to exonerate one of the indicted officers.



Ombudsman's recent Special Report, this is the only related case still pending before this independent state agency since 2001.<sup>73</sup>

### *Criminal Investigation and conclusion*

On October 8, 2001, Theodore Stefanou filed a complaint for ill-treatment. On June 30, 2002, the Argostoli Prosecutor indicted the police officers involved for ill-treatment and ordered a main investigation. On May 5, 2003, Theodore Stefanou and Nikos Theodoropoulos, as well as two other Romani youth all testified before the investigating judge and the prosecutor of Cephallonia. On August 25, 2003, the investigating judge ex officio extended the charges against the officers involved to include the ill-treatment of Nikos Theodoropoulos, thus summoning for their defence statements police officers George Choraitis, Nikos Kanellopoulos and Polytimos Yahalis who made their defence statements on 10 September and were set free. Then, the file was handed over to another prosecutor. On December 1, 2003, Mr Stefanou's GHM supported attorney, Mr Orestis Georgiadis, submitted a legal brief, commenting on the prosecutor's motion, welcoming the referral of Officer Kanellopoulos and highlighting the fact that the findings of the SAI contained a number of inconsistencies and therefore should not form the basis of the decision not to refer Lieutenant Choraitis to trial. Mr Orestis Georgiadis supported the contention that Lieutenant Choraitis did, indeed, condone the actions of Officer Kanellopoulos or even encourage him to physically abuse Mr Stefanou.<sup>74</sup> GHM was informed orally in late January 2004 that the Prosecutor's recommendations had been followed and indicted only Officer Kanellopoulos for the ill-treatment of Mr. Stefanou.

This case is important because it highlights a number of problems Roma and migrants and their advocates face in accessing effective redress for ill-treatment, injury or death at the hands of law enforcement officers in Greece. It indicates that Greek state authorities usually do their utmost not to carry out prompt, thorough and impartial investigations to punish those found responsible. Instead they proceed to cover-up, wherever possible, the responsibility of law enforcement officers in cases of ill-treatment, injuries and deaths of civilians, so as to secure their impunity, and then deny the presence of this widespread phenomenon. The Greek Ombudsman's Office, in its recently released Special Report concerning the way in which administrative inquiries are held, echoed some of the points raised above. Thus, it noted that there were doubts concerning the impartiality and objectivity of the police officer who undertook to conduct the SAI while it also criticised the non-imposition of disciplinary penalties against any of the police officers as well as the unwillingness of the Hellenic Police to effectively inform the victims as to the result of the SAI.<sup>75</sup> It is regrettable, moreover, that in such cases, the Greek Ombudsman, even though formally and repeatedly asked to, does not help guarantee the impartiality of the disciplinary investigations (they have no authority over the courts) or else establish their shortcomings and recommend it being held over again or –in serious cases- seek an investigation into the cover up.

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<sup>73</sup> See *Disciplinary – Administrative investigations into allegations against police officers*, July 2004 (released October 2004), *op.cit.* p. 92.

<sup>74</sup> Mr Georgiadis asked that Lieutenant Choraitis be charged with Article 137A (inflicting bodily harm) and 137B.2 (instigating the crime) of the Greek Criminal Code.

<sup>75</sup> See *Disciplinary – Administrative investigations into allegations against police officers*, July 2004 (released October 2004), *op.cit.*, p 106

When in such cases NGOs invest extensive resources over many years to fight well-orchestrated police cover ups, one would have expected from a genuine independent institution like the Ombudsman to at least look promptly and seriously into such allegations and in the end help the Greek state show that there is at least one institution therein that is effectively independent and impartial.

### 2.3.b. The Arnesto Nesto case<sup>76</sup>

On April 15, 2002 Arnesto Nesto, an unauthorized immigrant from Albania, was pursued by police near Megara (west of Athens). According to him, as police officers approached him he fired a gun in the air. In a written statement Arnesto Nesto later alleged that immediately after his arrest police officers handcuffed his hands behind his back and proceeded to beat him all over his body. He was then taken to Megara Police Station, where police officers allegedly punched, kicked and beat him with a truncheon on his face, body, hands and feet, causing him injuries and denied him water for 24 hours, food for 48 hours and that his requests to be examined by a doctor were refused.

On 18 April 2002 Arnesto Nesto was brought before a prosecutor in Athens to whom he allegedly showed his injuries and complained of the ill-treatment he had suffered. The prosecutor did not order an investigation into these allegations, although required to do so by law, or request a court order for his forensic examination. The same day Arnesto Nesto was also brought before an investigating judge of the 9th Investigations Department of the Court of Misdemeanours of Athens. The written record of this hearing states that Arnesto Nesto told the investigating judge: *"At Megara police station, they beat me, they beat me, they beat me and I didn't open my mouth. (...) When I say that I didn't open my mouth I mean that the police officers were forcing me to say things which I hadn't done."*<sup>77</sup> Arnesto Nesto also presented to the investigating judge a written statement in which he declared: *"During my arrest on 15 April, and afterwards, I was ill-treated by police officers, so that I would confess to offences which I had not committed"<sup>78</sup>, and sign the records of my interrogation (...) whose contents I am ignorant, since I do not understand Greek and an interpreter was not provided. Apart from the psychological pressure, I sustained severe physical injuries to my face, which you may readily confirm, and other parts of my body. I hereby request that you refer me to the competent forensic medical expert for examination."* The investigating judge did not respond to this request and failed to report Arnesto Nesto's complaint to the prosecutor, as required by law. Articles 20 (1) and 10 (1) of the Greek Constitution guarantee the right to submit requests to the authorities (including the judiciary) and to receive a reasoned answer. Two months later his lawyer informed Amnesty International that the investigating

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<sup>76</sup> The following information comes from the AI/IHF Report, *AI/IHF Greece: in the shadow of impunity...*, op.cit., p 66.

<sup>77</sup> Under Article 177.2 CCP evidence obtained by unlawful methods is inadmissible in court, subject to certain limited exceptions.

<sup>78</sup> Arnesto Nesto has been charged with attempted murder, robbery, unlawful possession and use of arms, entering Greece illegally, driving a car without a license and failing to obey police orders to stop the car he was driving.

judge had still not responded to Arnesto Nesto's request for forensic examination, and no investigation had been started on his complaint.<sup>79</sup>

On December 12, 2002, the Ministry of Justice replied to GHM that it had requested the Supreme Court's Prosecutor's Office to look into the case<sup>80</sup>. The latter answered that following an investigation it had launched, Mr. Nesto had not complained of any ill-treatment to the Misdemeanours Prosecutor. Interestingly, the Supreme Court's Prosecutor launched an investigation consisting of a phone-call to the investigating judge...<sup>81</sup> Nevertheless, photographs of Mr. Nesto taken on April 18, 2002 the day he was brought before the prosecutor and the investigating judge bear ample proof that he was indeed ill-treated. Additionally, in September 2002, GHM received a reply from the Ministry of Public Order arguing that a SAI had been conducted into his allegations but no disciplinary liability arose in relation to any police officer.

### **2.3.c. CPT on Prosecutors' and investigating judges' response to complaints of ill-treatment**

Several months before the Arnesto Nesto case, the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) had made an official visit to Greece. In its *Report on its visit to Greece from 23 September to 5 October 2001*,<sup>82</sup> it effectively provides a snapshot of what was to happen in the Arnesto Nesto case:

*18. Another effective means of preventing ill-treatment of persons deprived of their liberty lies in the diligent examination by the relevant authorities of all complaints of such treatment brought before them and, where appropriate, the imposition of a suitable penalty. This will have a very strong deterrent effect. Conversely, if the relevant authorities do not take effective action upon complaints referred to them, those minded to ill-treat persons deprived of their liberty will quickly come to believe that they can act with impunity. As had been the case during previous visits (cf. CPT/Inf (2001) 18, Part I, paragraph 18), several of the persons interviewed by the delegation stated that they had tried to complain about the manner in which they had been treated by the police (...) but that those authorities had displayed little interest in their complaints. Others indicated that they had been discouraged from complaining, including by their own lawyers, on the grounds that it would not be in their best interests.*

*19. As the CPT has stressed in previous reports, it is axiomatic that prosecutors and judges must take appropriate action when there are indications that ill-treatment by the police may have occurred. In this regard, **the CPT recommends that whenever criminal suspects brought***

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<sup>79</sup> Principle 6 of the UN Basic Principles on the Independence of the Judiciary states: "The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected."

<sup>80</sup> Letter from the Ministry of Justice to GHM, Ref. No. 194524, dated December 12, 2002.

<sup>81</sup> See Letter from the Supreme Court's Prosecutor's Office to the Minister of Justice, Ref. No. 2791, dated October 31, 2002, communicated to GHM by means of a letter from the Ministry of Justice to GHM, Ref. No. 194524, dated December 9, 2002.

<sup>82</sup> CPT/Inf(2002) 31, paras 18-20. The CPT report is available at <http://www.cpt.coe.int/documents/grc/2002-31-inf-eng.pdf>

***before a prosecutor or judge allege ill-treatment by law enforcement officials, the prosecutor/judge record the allegations in writing, order immediately a forensic medical examination and take the necessary steps to ensure that the allegations are properly investigated. Such an approach should be followed whether or not the person concerned bears visible external injuries. Further, even in the absence of an express allegation of ill-treatment, the prosecutor/judge should request a forensic medical examination whenever there are other grounds to believe that a person brought before him could have been the victim of ill-treatment. Appropriate steps must also be taken to ensure that persons who may have been victims of ill-treatment by law enforcement officials are not dissuaded from lodging a formal complaint. [emphasis in the original]***

*20. Further, persons taken into police custody who are subsequently released without being brought before a public prosecutor or judge should be able themselves to solicit a medical examination/certificate from a forensic institute; **the CPT's recommendation in this respect (cf. CPT/Inf (2001) 18, Part I, paragraph 19) has yet to be implemented and hence must be reiterated.** [emphasis in the original]*

#### 2.3.d. The Okeke case<sup>83</sup>

In February 2002 police arrested Joseph Emeka Okeke, a Nigerian, in the Greater Athens area, after an identity check revealed that he was subject to a judicial deportation order. At 4am on 25 June he was taken out of his cell by three police officers from the Aliens Directorate of Pallini (northeast Athens), who allegedly told him he was due to be released. Suspecting that he was about to be deported, he refused to follow them. According to his subsequent statement, they then "*grabbed me and started to kick me, pulling me and beating me with a large black rectangular object that had two extensions like claws. Every time they touched me it was as if electricity was piercing my body*". Then, he was put into a car, handcuffed and his feet bound with adhesive tape. He alleges that police also attempted to gag him by taping his mouth. After an attempt to deport him the police transferred him to Pallini Aliens Directorate. He alleges that "*There I was told to face the wall and kneel down. Then a police officer came up behind me and kicked me hard in the ribs. They kept on beating me until another officer arrived and told them to stop.*" Joseph Emeka Okeke was subsequently charged with "resisting authority" and was due to go on trial on July 10, 2002.

The above account was given by Joseph Emeka Okeke to GHM advocates on June 26, 2002, who observed "*deep scratches on the right arm, injuries on both wrists and a cut on the left side of the lower lip*". Joseph Emeka Okeke also provided a drawing of the instrument, resembling a stun-gun, which he alleges was used to give him electric shocks. Following an urgent request by GHM, the Minister of Public Order the next day (27 June) ordered an administrative inquiry to be carried out and Joseph Emeka Okeke was examined by two forensic medical experts. On June 28, 2002 he filed a criminal complaint and reported later that he had been interrogated by three plainclothes police officers who allegedly threatened him that

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<sup>83</sup> Information for this section was derived to a large extent from the AI/IHF *Greece: in the shadow of impunity...*, op.cit., p 34.

he would regret having complained and he was obliged to sign a document in Greek which he could not read. Another detainee who witnessed the alleged torture of Joseph Emeka Okeke, informed GHM on 28 June that police officers at the centre had threatened him and told him not to testify.<sup>84</sup>

The alleged use of an electro-shock weapon in this case is deeply disturbing and appeared to gain additional credibility following reports of another such allegation in August 2002.<sup>85</sup> The CPT's report on its visit to Greece in 1993 noted that two detainees at Athens Police Headquarters alleged that they had been tortured with electric shocks: "*Their descriptions of the device - black, shaped like an electric razor, with two poles at one end - were concordant.*" During the same visit, at Thessaloniki Police Headquarters, the CPT found in a locker "*a 29cm long black plastic rod equipped with two small electrodes at one end. The pressing of a button in the middle of the rod resulted in a spark passing between the electrodes.*"<sup>86</sup> With regard to Joseph Emeka Okeke's other allegations, it should be noted that the CPT has also declared that it is "*entirely unacceptable for [foreigners being deported] to be physically assaulted by police officers as a form of persuasion to board a means of transport or as punishment for not having done so ... the Committee must emphasize that to gag a person is a highly dangerous measure.*"<sup>87</sup>

### The SAI proceedings

The Hellenic Police assigned to Police Brigadier General G. Mitropoulos, Director of the Aliens Department, the task of conducting a Sworn Administrative Investigation (SAI). On September 20, 2002, GHM was informed that all allegations regarding torture "*.....are all lies, as was confirmed by the individual who was allegedly ill-treated and by his fellow detainees*". As, Mr. Okeke told his advocate however, he had never withdrawn his original allegations and that he had never signed a statement for SAI since the text was in Greek. Moreover, in September 2002, GHM received an Information Note from the Ministry of Public Order reporting that the SAI launched on Mr. Okeke's case concluded that the allegations were unfounded and that, in fact, "**...All allegations of torturing the detainee by means of electroshocks were denied categorically by himself and his cell mates. Finally, the case was shelved as far as the disciplinary proceedings are concerned.**"[bold and underlining in the original].<sup>88</sup>

In the face of the above, on December 8, 2002, GHM asked for the disclosure of the SAI documents. On April 9, 2003, the Hellenic Police answered that it could not provide it with any of the SAI documents requested (on grounds of confidentiality and of protection of sensitive personal data) except for a copy of Mr. Okeke's

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<sup>84</sup> See pertinent GHM press releases at [http://www.greekhelsinki.gr/bhr/english/organizations/ghm/ghm\\_27\\_06\\_02.rtf](http://www.greekhelsinki.gr/bhr/english/organizations/ghm/ghm_27_06_02.rtf) and [http://www.greekhelsinki.gr/bhr/english/organizations/ghm/ghm\\_28\\_06\\_02.rtf](http://www.greekhelsinki.gr/bhr/english/organizations/ghm/ghm_28_06_02.rtf)

<sup>85</sup> A Greek military conscript, Yannis Papakostas, detained on 14 August 2002 for driving a motorcycle without license, alleged that a plainclothes police officer at Aspropyrgos police station subjected him to electric shocks on his shoulders and genitals (Avghi and Eleftherotypia, Athens based daily newspapers, August 16, 2002). The police authorities instituted an administrative inquiry into this complaint.

<sup>86</sup> CPT/Inf (94)20, paragraphs 20, 21 and 22.

<sup>87</sup> CPT/Inf (98)9, published on 19 May 1998, paragraph 11 (commenting on allegations the CPT had encountered during its visit to Spain in 1997 that foreigners expelled from Spain had been beaten and gagged with adhesive tape).

<sup>88</sup> Ministry of Public Order, *Information Note on Cases mentioned in the AI/IHF Report* (in Greek), September 2002, p 3.

forensic medical examination.<sup>89</sup> Earlier on, on December 10, 2002, the Hellenic Police had dispatched the Report on the SAIs Findings to the Ombudsman's Office, noting that the document was "Confidential". On July 2, 2003, the Ombudsman's Office informed the Hellenic Police that it disagreed with the latter's assessment and then proceeded to disclose the Report on the SAIs Findings to GHM.<sup>90</sup> The disclosure by the Ombudsman's Office of the Report on the SAI's Findings heightened GHM's suspicions of a cover up, as the document contained many inaccuracies as well as insulting remarks on Mr. Okeke. Consequently, on July 25, 2003, GHM addressed another letter to the Ombudsman's Office, calling upon it once again to intervene so that the potential disciplinary liability of the officer who conducted the SAI be examined.

GHM's suspicions of a cover up were reinforced when, in October 2003, it got access to the depositions of Mr. Okeke that were part of the "preliminary inquiry" file launched following the filing of a criminal complaint by GHM on June 28, 2002. In those statements, Mr. Okeke referred in great detail to his ill-treatment as well as his subjection to electric shock. At the same date, GHM was also informed that the prosecutor to whom the penal file had been transferred had ex officio ordered the police to carry a "preliminary inquiry" into Mr. Okeke's allegations. On December 31, 2003, GHM addressed another letter to the Hellenic Police, asking for the disclosure of the SAI documents and noting that the Data Protection Authority, had ruled in favour of disclosure which was done on January 16, 2004.<sup>91</sup> The reasons for the Hellenic Police's refusal for more than a year to disclose the SAI related files became suddenly all too clear. In the Report on the SAI's Findings, forwarded to GHM by the Ombudsman's Office the police officer conducting the SAI, Police Brigadier General G. Mitropoulos, Director of the Aliens Department, has stated that Mr. Okeke testified before him that he was not ill-treated. Nevertheless, when GHM took delivery of the said deposition, it noticed that not only Mr. Okeke had not retracted his allegations but rather he had proceeded to describe once again, in detail, the ill-treatment he had suffered. Furthermore, the deposition did not bear Mr. Okeke's signature. Indeed, Mr. Okeke had informed GHM that he had refused to sign the deposition as he did not know what was written in it. On September 15, 2004, the Ombudsman addressed a letter to the Hellenic Police, noting numerous procedural and substantive shortcomings in the *Report on the SAI findings*, compiled by police brigadier (now police major general) G. Mitropoulos.<sup>92</sup> More specifically, the Ombudsman criticised major general's Mitropoulos highly selective references to statements of Mr. Okeke, references that presented a totally distorted picture. The Ombudsman also stated that many of the conclusions reached by police major general Mitropoulos were not premised upon any of the documents included in the SAI file. Highlighting the importance of the SAI for the penal limb of the case, the Ombudsman called upon the Hellenic Police to re-evaluate its Report on the SAI Findings.<sup>93</sup> It is also worth noting that the Ombudsman had already, in its *Special Report*, expressed its criticism over the way the SAI in the allegations of Mr. Okeke was held. According to the Ombudsman, the whole administrative procedure suffered from gross mistakes concerning the evaluation and appraisal of the available evidence, the legal evaluation of the evidence was wrongful, while it also criticised the non-

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<sup>89</sup> Letter from Hellenic Police to GHM, Ref. No 6004/15/3751-λ', dated April 9, 2003.

<sup>90</sup> Letter from the Ombudsman's Office to GHM, Ref. No. 13170.02.2.2, dated July 2, 2003.

<sup>91</sup> Letter from Hellenic Police Headquarters to GHM, Ref. No. 6004/15/3751-λδ', dated January 16, 2004.

<sup>92</sup> Ombudsman's document to Hellenic Police, copied to GHM, Ref. No. 13170.02.2.3

<sup>93</sup> See translation of the letter in Appendix

imposition of any disciplinary penalties and the various obstacles and procastrinations caused by the Hellenic Police in informing the victim and its representatives of the SAI's outcome.<sup>94</sup> Moreover, on October 2, 2004, GHM addressed a letter to the Hellenic Police, calling for the launching of a SAI against police major general Mitropoulos concerning the way he conducted the SAI in the case of Mr. Okeke. GHM also called for the suspension from duty of police major general Mitropoulos during the conduct of the SAI.

Turning to the judicial investigation into the case of Mr Okeke, it is noted that two separate investigations were launched. Following completion of the preliminary inquiry, the prosecutor decided to shelve the case, considering that the allegations were groundless.<sup>95</sup> GHM's legal counsel, in his capacity as Mr. Okeke's legal representative, appealed the prosecutor's decision before the Appeals Court Prosecutor, who upheld the Misdemeanours Prosecutor decision to shelve the case.<sup>96</sup> Additionally, as noted above, GHM's legal counsel, acting in his capacity as legal representative for Mr. Okeke, filed, on June 28, 2002, a criminal complaint concerning Mr. Okeke's alleged abuse and subjection to electro-shock. Although the Prosecutor initially ordered a preliminary inquiry to be held, on November 18, 2002, she instituted criminal proceedings against the police officers involved, calling upon the Hellenic Police to launch a summary investigation into the allegations. Interestingly enough, the Hellenic Police returned the penal file to the Prosecutor on April 2, 2003<sup>97</sup> including only the depositions of the three police officers involved and not the one of Mr Okeke who had conveniently been deported on November 30, 2002, i.e two days following the receipt by the Hellenic Police of the Prosecutor's order to launch a summary investigation into the allegations. If nothing else, the Hellenic Police could have taken Mr. Okeke's deposition before deporting him. According to GHM information, the competent prosecutor has decided to shelve Mr Okeke's criminal complaint, but such ruling had not been served to the lawyers of Mr. Okeke (as he is no longer in Greece). Mr. Okeke, through GHM, will be filing an application with the European Court of Human Rights, claiming a violation of Article 3 of the European Convention on Human Rights.

### **3. Detention Conditions**

#### **3.1 General detention conditions**

Both IGOs and NGOs have repeatedly observed that detention conditions in both detention centres as well as prisons fell below international human rights standards. Although improvements have been made, the general picture is today similar to that portrayed by UNCHR Athens in 2002 and CPT in 2001:

#### **UNHCR ATHENS ON CONDITIONS OF DETENTION OF ASYLUM SEEKERS 2002**

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<sup>94</sup> See *Disciplinary – Administrative investigations into allegations against police officers*, July 2004 (released October 2004), *op.cit.*, p 106

<sup>95</sup> Misdemeanours Prosecutor of Athens Decree IF02/11116/105, dated October 14, 2003.

<sup>96</sup> Appeals Court Prosecutor of Athens Decree 733/03, dated December 12, 2003.

<sup>97</sup> Letter from the Hellenic Police to the Misdemeanour's Prosecutor Office of Athens, Ref. No. 3021/8/163-α, dated April 2, 2003.

*“Conditions of detention for illegal stayers are very poor. In some cases families with small children are kept in detention. Unaccompanied minors (usually boys over the age of 15) are also kept in detention with adults. Spouses are frequently separated from each other, and sometimes months go by before they can meet again, and communications are practically impossible. In other cases, on the other hand, women and men are detained together. Health and sanitary conditions leave much to be desired, but the most acute concern is that in most cases no accurate information is given to the affected persons, regarding why or for how long they are to be detained, or what will happen to them after their release. (...) Other problems observed are the absence of any reading material, or other activities while in detention, and of coming out to the fresh air... (...) In his report on his visit to Greece, Alvaro Gil-Robles, Commissioner for Human Rights of the Council of Europe, echoed UNHCR’s concerns. Following his visit, the Ministry of Public Order decided recently to close down the detention centre at the police headquarters, Alexandras Avenue.”<sup>98</sup>*

GHM would like to note that the Alexandras Avenue detention facility was not closed down, but, from early 2003 onwards, was no longer used for alien detainees. Despite its inadequacy, well described by the Commissioner, it continued to be used for persons arrested and detained –up to several days– pending arraignment or trial. So, on 25 February 2003, a detainee held on charges of child pornography, whose name and homosexual orientation had been named in the arrest press release of the police, committed suicide there.<sup>99</sup>

## **CPT ASSESSMENT ON CONDITIONS IN POLICE DETENTION FACILITIES 2001**

*34. The CPT wishes to reiterate that depriving persons of their liberty brings with it the responsibility to detain them under conditions which are consistent with the inherent dignity of the human person. At present, this responsibility is not being fulfilled vis-à-vis many persons held in law enforcement agency detention facilities in Greece.*

*Current arrangements are particularly unacceptable as regards persons who can remain in custody for weeks in ordinary law enforcement agency detention facilities such as those described in paragraphs 24 to 28, in particular immigration detainees. As indicated in previous visit reports, conditions in police stations/headquarters will frequently - if not invariably - be inadequate for prolonged periods of detention (cf. CPT/Inf (2001) 18, Part I, paragraph 13).*

*35. In short, the information gathered in the course of the 2001 visit shows that, despite improvements made, many of the recommendations made by the CPT after its previous visits to Greece, some in the form of immediate observations, have yet to be implemented.”<sup>100</sup>*

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<sup>98</sup> UNHCR-Athens *The Protection of Refugees and Asylum Seekers in Greece in 2002* (<http://www.nchr.gr/downloads/GR-UNHCR02-P~1.DOC>) p. 13-4.

<sup>99</sup> See GHM Press Release entitled *Detainee Commits Suicide In Attica Police Holding Facilities that Were to Be “Withdrawn Entirely from Active Service” in December 2002*

[http://www.greekhelsinki.gr/bhr/english/organizations/ghm/ghm\\_25\\_02\\_03.rtf](http://www.greekhelsinki.gr/bhr/english/organizations/ghm/ghm_25_02_03.rtf); and OMCT Appeal *Death in Detention of Mr. Alexandros Kallias* (Case GRC 280203) <http://groups.yahoo.com/group/balkanhr/message/5147>

<sup>100</sup> CPT/Inf (2001) 31, paras 34-35. The CPT report is available at <http://www.cpt.coe.int/documents/grc/2002-31-inf-eng.pdf>



### 3.2 Detention conditions in prisons: the perennial problem of overcrowding

The Ministry of Justice's data for October 2004 indicate that prisons have a capacity of 5,584 inmates (+1082 between 1999-2004) but an actual population of 8,524 inmates (+1,244 between 1999-2004). The problem is particularly acute in the country's main prison in Korydallos (Greater Athens) with an unchanged capacity of 640 and a population of 1,986 2,234 (+322 inmates between 1999-2004, yet -248 for the period 2002-2004). Recent opening of new prisons is expected to contribute in helping solve this problem –as with the slight drop in numbers in the Korydallos facility- but their actual effect remains to be seen.<sup>101</sup> As for the living conditions inside prisons, Minister of Justice Anastasis Papaligouras stated on March 31, 2004 that *“Our penitentiary system of today presents a disheartening picture. In fact, it is in such a state that it offends modern perceptions concerning individual and social rights. It also constitutes an affront to our culture. ...prisons have to cease to be places of punishment –modern day places of torment- and places where souls are corrupted. [ ... ] There is no bigger proof of our penitentiary system's failure than the fact that most of the prisoners who are released, quickly end up getting imprisoned again.”*<sup>102</sup>

Overcrowding however is only one aspect of the highly problematic living conditions prevailing into penal correctional institution. To this end, it is reminded that, as the European Court of Human Rights has held, detention conditions in such institutions might amount to inhuman or degrading treatment.<sup>103</sup> A July 2004 report by the National Commission for Human Rights gives an indicative description of detention conditions in Greece's largest prison of Korydallos:

**“National Commission for Human Rights (NCHR) Report**  
(excerpts translated by GHM from the report available in Greek at  
[http://www.nchr.gr/media/word/nchr\\_visit\\_korydallos\\_prison.doc](http://www.nchr.gr/media/word/nchr_visit_korydallos_prison.doc))  
**NCHR visit to the Men's Prison Facility of Korydallos (May 21, 2004)**

*[...] we visited cells located in two different wings. (...)Four inmates were living in a small cell that was built to accommodate one, at most two persons. [There was no room for] not even one chair, while if one of the inmates is standing up and wishes to walk inside the cell, then the others have to sit on the beds. The latrine is located inside the cell, and it is only partially covered from exposure to the common view.*

*Due to the overcrowding, the inmates are not assigned to cells by virtue of any sort of classification (apart from the basic classifications), not even on grounds of health (e.g. carriers of hepatitis are housed together with healthy inmates).*

*The number of drug addicts cannot be ascertained; in fact all of the inmates are drug addicts. There are persons who were convicted for being*

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<sup>101</sup> <http://www.ministryofjustice.gr/modules.php?op=modload&name=Sofronistiko&file=page4>

<sup>102</sup> Press Bulletin from APA (Athens Press Agency), dated March 31, 2004.

<sup>103</sup> See case brought before the European Court of Human Rights, *Dougoz v. Greece* (Appl. no. 40907/98) 6 March 2001,

*drug addicts (and hence the prison authorities are aware of the fact that they are drug addicts) while there are also persons who, although they are drug addicts, were imprisoned for other offences (e.g. stealing in order to procure drugs) and thus in many cases the prison authorities are not aware of them. Others became drug addicts while serving their sentence, due to their close coexistence with drug addicts. The wing where the drug addicts are detained (only 455 persons are housed there, although the real number of drug addicts is far greater) has a special garden – courtyard which is spacious and has trees and other plants, cultivated by the drug addicts themselves.*

*4. In general, the prison lacks facilities for the creative occupation of the inmates. This constitutes a very serious deficiency. Neither space nor personnel is available for the holding of workshops in the scale required. (...).*

*There are not enough wardens, while most of them have not received any specialized training.*

*The Prison's Board, which consists of the Prison's Director, two criminologists and the head of the prison's social workers, has a very useful role to play.*

*(...)<sup>104</sup>*

*Finally, if the living conditions of the "ordinary" penal inmates are compared with those of the inmates convicted of membership to the November 17 group, the conditions of the latter are by all means incomparably better and of a generally acceptable standard (especially considering that they have been convicted for homicide etc)*

Unfortunately, NGO-based information concerning the detention conditions is rather limited, as Greek authorities do not allow NGOs access to such facilities.<sup>105</sup> Thus, although the Greek state informed CAT, in May 2001 that "free access of United Nations High Commission officials and representatives of NGOs to all detention facilities is provided", GHM and other NGOs have been repeatedly denied access; indeed, when GHM addressed a letter to the Ministry of Justice in July 2001 in which it asked for permission to visit various prison facilities, it received the answer that "there is no provision in the Correctional Code for free access to

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<sup>104</sup> The report goes on to note that "In general, it has to be said that the inadequate staff is struggling, amidst very bad material conditions, to address the problem of overcrowding which creates situations that are unacceptable from a humanitarian viewpoint but which are also explosive."

<sup>105</sup> Occasional press reports however would suggest that problems inside prisons are numerous and often lead to various forms of protest. Thus, on July 23, 2004, it was reported that the foreign (mostly Albanians) inmates of three prisons in Greece refused to receive food, in protest over the long sentences imposed upon them as well as the discrimination against them. See Macedonian Press Agency article, dated July 23, 2004, available in Greek at [http://www.mpa.gr/article.html?doc\\_id=467750](http://www.mpa.gr/article.html?doc_id=467750) According to other press reports however, inmates (of all nationalities) in six prisons in Greece had refused to receive food, demanding that those arrested for drugs be released following completion of 3/5 of their sentence. Moreover, the inmates demanded that the issue of overcrowding be addressed and that more short leaves from prisons be granted. See Skai Radio news story, dated July 24, 2004, available in Greek at [http://www.skairadio.gr/4dcgi/w\\_articles\\_skaigreece\\_365924\\_24/07/2004\\_103004](http://www.skairadio.gr/4dcgi/w_articles_skaigreece_365924_24/07/2004_103004) It appears that this peaceful form of protest is ongoing as of July 25, 2004, while it has also been reported that due to the Olympic Games, no short leaves from prisons are granted any more. See Macedonian Press Agency article, dated July 25, 2004, available in Greek at [http://www.mpa.gr/article.html?doc\\_id=467963](http://www.mpa.gr/article.html?doc_id=467963)

prisons.”<sup>106</sup> Following the lodging of complaints to the Ombudsman’s office by GHM and other NGOs concerning the right of access to prison and detention facilities, the Ombudsman carried out an investigation and adopted two Findings Reports<sup>107</sup> forwarded, inter alia, to the Chief of the Hellenic Police who proceeded to adopt, on July 4, 2003, Circular Ref. No. 4803/22/44, entitled “Treatment and rights of persons detained by the police authorities”. The Circular states, in Article 3.d, that police authorities should inform detainees that NGOs have expressed an interest to visit the facility they are held; should the detainees agree to such a visit, then the police authorities should allow it to take place. Unfortunately the circular appears more as a mean to “appease” international bodies rather than to ensure NGO access to prisons and detentions. By way of example, when a GHM associate sought permission, on September 19, 2003, to visit a facility in Rhodes where asylum seekers are detained, permission was denied on the ground that no such circular had been received. On September 19, 2003, GHM addressed a letter to the Chief of the Hellenic Police, calling upon his office to ensure that all police authorities were aware of the circular. As of October 2004 however, GHM has received no answer to its letter. Similarly, although GHM, together with the *Medecins du Monde-Greece*, addressed a letter to the Chief of the Hellenic Police on June 4, 2004, asking for permission to visit the women’s detention facilities in Amygdaleza, no answer has been received mid-October 2004. On June 12, 2004, GHM lodged a complaint with the Ombudsman’s Office, calling upon it to intervene so that the permission to visit the detention facility be granted. As of mid-October 2004, GHM has received no answer from the Ombudsman’s Office. On August 6, 2004, GHM was denied access to the detention center of the Minors’ Division in the Athens Police Directorate. On September 30, 2004, GHM requested from the Office of the Minister of Justice permission to visit Greece’s two main prisons in Korydallos, but by mid-October 2004 permission was not granted.

#### 4. Refoulement

Perhaps the most disquieting development in this regard has been the signing, on January 20, 2001, between Turkey and Greece, of an *Agreement on Combating Crime, especially Terrorism, Organized Crime, Illicit drug-trafficking and illegal migration*.<sup>108</sup> Article 8 of the agreement provided that the two states would cooperate into “combating illegal trafficking” until a specific agreement concerning issues of re-admission would be signed. Indeed, on November 8, 2001, a Protocol for Re-admission was signed<sup>109</sup> which provided for a blanket provision for the almost immediate forwarding to Turkey of all illegal immigrants who had entered Greece via the Greek – Turkish border. The protocol did not contain any reference to asylum seekers, thereby inviting criticism by both IGOs and NGOs. Thus UNHCR has stated that it “...remains concerned that the implementation of the Greece – Turkey readmission Protocol may affect persons in need of international protection, given the profile of persons who have been returned under its terms”.<sup>110</sup> The

<sup>106</sup> See GHM Statement to the 2001 OSCE Implementation Meeting Working Session on “Rule of Law”, *Greece: Unfair Treatment of Migrants and Minorities*, September 18, 2001, available in English at [http://www.greekhelsinki.gr/bhr/english/organizations/ghm/ghm\\_osceB\\_18\\_09\\_01.doc](http://www.greekhelsinki.gr/bhr/english/organizations/ghm/ghm_osceB_18_09_01.doc)

<sup>107</sup> Findings Report Ref. No. 12393.02.2.1, dated November 28, 2002, was based on complaints lodged by GHM while Findings Report Ref. No. 11895/02/2.1 and 16822/02/2.1, dated November 5, 2002, was based on complaints lodged by Amnesty International – Greek Section and a human rights sensitive lawyer with a narrower scope.

<sup>108</sup> Ratified in Greece by virtue of Law 2926/2001, in effect as of June 27, 2001.

<sup>109</sup> Ratified by Greece by virtue of Law 3030/2002, in effect as of August 5, 2002.

<sup>110</sup> See document *UNCHR Position on Important Aspects of Refugee Protection in Greece*, (in Greek), October 2003, available at

Greek National Commission of Human Rights (NCHR) was even more critical, noting that

*“The Commission notes with grave concern that there are direct consequences for the rights of those who wish to enter Greek territory and to seek asylum. (...) Moreover, the tendency of the authorities to describe in advance and collectively all those who seek to enter this country as illegal immigrants is more generally disturbing. ... More specifically, as concerns the procedures for the implementation of the agreement, an express commitment is required to the effect that :*

*- the scope of application of the Protocol does not include asylum-seekers;  
- that for as long as their application is pending, refoulement will not be possible.*

*The assurances of the Greek Ministers of Foreign Affairs and of Public Order appear encouraging, but not sufficient, since in practice refoulement has up to now been carried out by summary procedures and without the safeguarding of the right of submitting an application for asylum. In practice, those on board vessels which have been propelled towards Turkish territorial waters have not been able to explain the reasons for which they could seek and obtain asylum in Greece.”<sup>111</sup>*

These criticisms appear to be well founded. In addition there have also been reports of persons entering Greece, being forwarded to Turkey, then re-entering Greece and then (in their second admission in Greece) managing to file an application for asylum, thereby demonstrating that they are not illegal immigrants but asylum seekers. The problem is also accentuated as while at times immigrants are detained for a short period of time before being forwarded to Turkey, Greek authorities refuse to accept their asylum application or inform them of their rights, or even allow NGOs and human rights activists to visit them and file asylum applications on their behalf.<sup>112</sup>

Additionally, there have been cases that individuals have been deported from Greece despite the fact that there was clear and unambiguous evidence that they risked being subjected to torture / ill-treatment or even death. Thus, on December 3, 2001, Greece deported to Turkey Mr. Abdulkader Aziz Mamakala, an Iraqi Kurd aged 65-70 who had been tortured in his native country and bore visible signs of the torture he has been subjected to. Mr Aziz Mamakala was among a group of 80 Iraqi Kurds (71 Muslims and 9 Christians) and 9 Khazars from Afghanistan (Muslims) who arrived in Kymi, island of Euboea, on November 17, 2001. Most of them had made oral declarations that they wished to apply for asylum. The Police Directorate repeatedly assured the Kymi attorney, Theodoros Theodorou, that they all would be transported to Athens where they could submit formal applications and proper procedure would follow. Then, without warning, on 3 December, an order arrived to select at random 34 of the detainees and deport them to Turkey. One of them was Mr. Aziz Mamakala, despite the fact that he bore evident,

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<http://www.unhcr.gr/download/strategy2003.htm>

<sup>111</sup> See NCHR document (in English) *Comments on the Bill regarding the ratification of the “Protocol for the Implementation of Article 8 of the Agreement between the government of the Hellenic Republic and the Government of the Republic of Turkey on combating crime, especially terrorism, organized crime, illicit drug trafficking and illegal migration”*, dated January 31, 2002, available at [http://www.nchr.gr/category.php?category\\_id=108](http://www.nchr.gr/category.php?category_id=108)

<sup>112</sup> See generally AI(Greek section), *Greece’s Refugee Policy, June 2002-November 2003*, published in January 2004, in Greek.

indelible signs of torture. In order to avoid protest, the deportees were to be told that they were being taken to Athens. Moreover, immediately following this “selection process” they were denied access to an attorney. In the end, and following a huge outcry, deportations were suspended but not before the group of those 34 persons (including Mr. Aziz Mamakala) had been deported to Turkey.<sup>113</sup>

## 5. Patterns of Discrimination

As it has been indicated by various international bodies in their reports on Greece, certain ethnic or national groups are more likely to suffer human rights abuses, including torture and / or ill – treatment, than others. Thus, as the European Commission against Racism and Intolerance (ECRI) noted in its *Second Report on Greece*:

*“There have been consistent reports that Roma/Gypsies, Albanians and other immigrants are frequently victims of misbehaviour on the part of the police in Greece. In particular, Roma/Gypsies are often reported to be victims of excessive use of force -- in some cases resulting in death -- ill-treatment and verbal abuse on the part of the police. Discriminatory checks involving members of these groups are widespread. In most cases there is reported to be little investigation of these cases, and little transparency on the results of these investigations. Although most of these incidents do not generally result in a complaint being filed by the victim, when charges have been pressed the victims have reportedly in some cases been subjected to pressure to drop such charges. ECRI stresses the urgent need for the improvement of the response of the internal and external control mechanisms to the complaints of misbehaviour vis à vis members of minority groups on the part of the police. In this respect, ECRI notes with interest the recent establishment of a body to examine complaints of the most serious cases of misbehaviour on the part of the police and emphasises the importance of its independence and of its accessibility by members of minority groups.”<sup>114</sup>*

ECRI voiced similar concerns in its *Third Report on Greece*:

*“ECRI expresses concern over serious allegations of ill-treatment of members of minority groups, such as Roma and both authorised and unauthorised immigrants. The ill-treatment in question ranges from racist insults to physical violence and is inflicted either at the time of arrest or during custody. ECRI is particularly concerned over the existence of widespread allegations of improper use of firearms, sometimes resulting in death. It is equally concerned over reports of ill-treatment of minors and expulsion of non-citizens outside of legal procedures.”<sup>115</sup>*

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<sup>113</sup> See GHM Press Release, dated December 9, 2001, entitled *Deportation of a Kurd who had been skinned alive*, available in English at [http://www.greekhelsinki.gr/bhr/english/organizations/ghm/ghm\\_09\\_12\\_01.rtf](http://www.greekhelsinki.gr/bhr/english/organizations/ghm/ghm_09_12_01.rtf)

<sup>114</sup> See European Commission against Racism and Intolerance, *Second Report on Greece*, adopted on 10 December 1999, made public on 27 June 2000, CRI(2000)32, paragraph 26, available at [http://www.coe.int/T/E/human\\_rights/Ecri/5-Archives/1-ECRI's\\_work/5-CBC\\_Second\\_reports/Greece/Greece\\_CBC\\_2.asp#TopOfPage](http://www.coe.int/T/E/human_rights/Ecri/5-Archives/1-ECRI's_work/5-CBC_Second_reports/Greece/Greece_CBC_2.asp#TopOfPage)

<sup>115</sup> See European Commission against Racism and Intolerance, *Third Report on Greece*, adopted on 5 December 2004, made public on 8 June 2004, paragraph 105. The report is available at



Similarly, CAT had already expressed its concern over:

*"(a) Evidence that the police sometimes use excessive or unjustifiable force in carrying out their duties, particularly when dealing with ethnic and national minorities and foreigners;*

*(b) The harsh conditions of detention in general and, in particular, the long-term detention of undocumented migrants and/or asylum-seekers awaiting deportation in police stations without adequate facilities;*

*(c) The severe overcrowding in prisons, which aggravates the already substandard material conditions and may contribute to inter-prisoner violence."<sup>116</sup>*

CPT had also noted that police officers and other law enforcement personnel espouse hostile feelings vis-à-vis certain categories of detainees. Thus, according to CPT:

*"during conversations held with law enforcement officials in several of the establishments visited, the delegation could not fail to note the disrespectful attitude displayed by some officers when referring to detainees, particularly those of Albanian origin."<sup>117</sup>*

Statistical evidence corroborates the belief that certain groups are over-represented in the criminal justice system. Thus, 3,907 or 46% of the 8,507 inmates in 2002 were foreigners,<sup>118</sup> when foreigners in Greece are estimated to number approximately 1,000,000 or 10% of the total population. Yet, Ministry of Public Order statistics for the most serious crimes, showed that, for example, between 1999-2001, among the reported perpetrators of homicides, 30% were foreigners; the equivalent percentages were 12% for fraudulent crimes, 27% for rapes, 34% for extortions, 36% for thefts, 33% for robberies.<sup>119</sup>

## **6. The Role of lawyers**

Certain deficiencies of the judicial procedure concerning the investigation of allegations of torture / ill-treatment could be addressed by a vigorous attitude on the part of the legal counsel for the complainant. Unfortunately however, many lawyers tend to refrain from challenging improper practices. Indeed, as CPT has noted,

*"As had been the case during previous visits (cf. CPT/Inf (2001) 18, Part I, paragraph 18), several of the persons interviewed by the delegation stated that they had tried to complain about the manner in which they had been treated by the police [...] Others indicated that they had been discouraged*

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[http://www.coe.int/T/E/human\\_rights/Ecri/1-ECRI/2-Country-by-country\\_approach/Greece/Greece\\_CBC\\_3.asp#TopOfPage](http://www.coe.int/T/E/human_rights/Ecri/1-ECRI/2-Country-by-country_approach/Greece/Greece_CBC_3.asp#TopOfPage)

<sup>116</sup> See Concluding observations of the Committee against Torture : Greece. 08/05/2001, 08/05/2001, UN Doc A/56/44, paragraphs 83-88 (Concluding Observations/Comments, at paragraph 87), available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/336a0d9ee8c62b8ec1256a4800558d6f?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/336a0d9ee8c62b8ec1256a4800558d6f?Opendocument)

<sup>117</sup> See CPT/Inf (2002) 31, *op.cit.*, paragraph 14.

<sup>118</sup> <http://www.ministryofjustice.gr/modules.php?op=modload&name=Sofronistiko&file=page4>

<sup>119</sup> <http://www.ydt.gr/main/Section.jsp?SectionID=10170>

*from complaining, including by their own lawyers, on the grounds that it would not be in their best interests.*"<sup>120</sup>

The reluctance of lawyers was a collateral issue that has arisen within the framework of Mr Stephanou's case (see section 2.3.a. supra). Under Greek law, plaintiffs have to be represented by both legal counsel and process agent if the former is not based in the area in which the alleged crime was committed. Absence of a process agent has severe repercussions, as the plaintiff is deprived of his civil claimant status and hence cannot take part in or be informed of the procedure.<sup>121</sup> Finding a process agent is usually a simple procedure, but in cases in which police officers are accused of crimes, the procedure is beset with problems, as exemplified by Mr Stephanou's case. On the very day Mr Stephanou's criminal complaint was lodged (October 8, 2001), Mr Stephanou's GHM supported legal counsel was unable to find a Cephallonia-based lawyer to act as process agent. All four contacted lawyers, including the then-Chairman of the Cephallonia Bar Association, declined to act as such after being informed of the content of the criminal complaint. Only after a few months did GHM find a lawyer, Mr. Antonios Drakontaeidis, but after some time, it came to the attention of GHM that he had not informed the court of his appointment and GHM were unable to contact him. GHM found another lawyer, Ms Eftichia Anastasiadou, who formally accepted, on November 12, 2002, to serve as process agent in the case. On October 13, 2003 however, the Argostoli Prosecutor informed GHM that Ms Anastasiadou, without having previously informed GHM, had orally stated she did not want to be involved in the case and declined to sign the notification of the completion of the judicial investigation. To this end, GHM's spokesperson Panayote Dimitras who has a special authorization to represent Mr. Stephanou, had to rush such a signed notification from Athens. Thus, on October 23, 2003, GHM sent a letter to the Cephallonia Chairman of the First Instance Judges, copied to the Greek Minister of Justice, the Prosecutor of the Supreme Court, the President of the Plenary of Greece's Bar Associations and the Greek Ombudsman, wherein they informed the Chief Cephallonia Judge of the above and requested the appointment of a process agent.<sup>122</sup> The letter was transmitted to the Cephallonia Bar Association which, refuted the claim that lawyers from Cephallonia had refused to act as process agents. On November 11, 2002, GHM responded, noting that the claims can be substantiated and called for the Chairman of the Bar Association to give an opinion concerning the manner in which Mrs. Anastasiadou withdrew from the case. Through June 2004, GHM had not received a response from the Cephallonia Bar Association, but were informed that disciplinary proceedings had been launched

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<sup>120</sup> See CPT/Inf (2002) 31, *op.cit.*, paragraph 18.

<sup>121</sup> According to the official document entitled *Before the United Nations Human Rights Committee: Observations of the Greek government on the admissibility in the case of Panagiotis Tzelal versus Greece*, Communication 1235/2003, undated, c March 2004, "A condition of validity of the civil claim is the appointment of a process agent in the area where the court is domiciled, if the civil claimant does not reside there ... According to the aforementioned provisions, the civil claim statement in a criminal proceeding must include the appointment of a process agent in the area where the court that has competence *ratione loci* to carry out the investigation is domiciled, if the civil claimant does not reside permanently there, otherwise the civil claim is inadmissible ... The appointment of a process agent by the claimant who resides outside the area where the court that has competence *ratione loci* is domiciled until the issuance of the first instance decree at the latest is a necessary condition of admissibility of the civil claim. If this condition is not fulfilled, the civil claim is dismissed as inadmissible pursuant to the law. '(...)'. Ibid, pp 14-15. The communication, lodged by GHM/ERRC, concerned the unlawful killing of a young Roma by police officers during a police operation in the Greater Thessaloniki area, on April 1, 1998.

<sup>122</sup> GHM also listed five other cases involving Roma and a Ukrainian trafficking victim, where local lawyers refused to act as process agents or had failed to inform the plaintiffs and their lawyers of crucial developments, hence damaging the cases.

against Ms Anastasiadou. Additionally, on November 13, 2003, the First Instance Court of Cephallonia informed GHM that it had appointed a lawyer to act as the process agent for Mr. Stephanou. Yet, characteristically of the hypocritical attitude towards process agents, when the courts served a judicial council ruling to Mr. Stefanou, they ignored the process agent, as well as the change of address of Mr. Stefanou and served it to a relative of his in his old Patras address!

Another such case was that of the 17 year old Iraqi Wisam Hormez, an asylum seeker from Iraq (for the background of Mr. Hormez's case see section 4.3.b *infra*) who was sentenced on February 12, 2003 to four months imprisonment for entering illegally into Greece. Following the conviction, legal counsel for Mr Hormez, Ms Thomais Genoveli-Manou informed GHM of the case and asked for assistance. GHM duly informed the Ombudsman's Office while it also provided information to the World Organization against Torture (OMCT) for an appeal into Mr. Hormez's case.<sup>123</sup> GHM also informed other Greek NGOs of Mr. Hormez's case and they all met with her and made available all –including legal- support. GHM also helped Ms Genoveli appeal the court's decision. However GHM subsequently found out, that Ms Genoveli never informed either her client (Mr. Wisam Hormez) or his family of the actions taken by GHM and other NGOs. Even worse, it was well after the first hearing of the appeal on May 5, 2003 that Ms Genoveli-Manou informed GHM of the developments in the case, while she also stated that she had withdrawn from the case on Friday May 2, as the family could not afford to pay the court fees as well as her own fees. Mr. Hormez could not be reasonably expected to find another lawyer before May 5. Even then however, Ms. Genoveli-Manou did not inform him of the fact that NGOs had expressed an interest in his case and could possibly provide him with legal representation. GHM managed to find Mr. Hormez's family only a few days before the second hearing of the appeal, which took place on June 4, 2003. A human rights sensitive lawyer that was present for another case of human rights abuse, Mr. Thanassis Tartis, undertook to represent Mr. Hormez for free. Mr. Hormez was finally acquitted. On July 30, 2003, GHM informed the Chairman of the Athens Bar Association Dimitris Paxinos of Ms Genoveli-Manou's unprofessional conduct and called upon him to take any action he deemed necessary. GHM was subsequently informed that disciplinary proceedings had been launched against Ms. Genoveli-Manou by the Athens Bar Association, while on February 25, 2004, GHM Spokesperson Panayote Dimitras was called to testify as a witness in the framework of the disciplinary proceedings against Ms. Genoveli-Manou. As of July 2004, GHM is not aware of the outcome of the disciplinary proceedings against Ms. Genoveli – Manou.

In addition to Roma and immigrants, it appears that other categories of individuals also encounter difficulties in securing access to effective legal representation. Following press reports on two cases of alleged rape of young children by their fathers, it was revealed that in both cases local lawyers had declined from representing the accused. To this end, GHM addressed on April 24, 2004, a letter to the Chairman of the Plenary of the Bar Associations of Greece, Dimitris Paxinos,<sup>124</sup> calling upon the Plenary to investigate these two cases. In its letter, GHM also noted that while lawyers reportedly decline to take up (even as mere process agents) cases of persons belonging to vulnerable social groups (especially when such cases concern allegations of ill-treatment by state officials), it has not

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<sup>123</sup> OMCT appeal available at <http://www.omct.org/displaydocument.asp?DocType=Appeal&Language=EN&Index=3345>

<sup>124</sup> Mr. Paxinos is also the Chairman of the Athens Bar Association.



been reported that other categories of offenders, such as persons accused of drug-dealing, face similar problems concerning access to legal representation.

All this should be contrasted with the state's provision to pay -and well- the lawyers chosen by the alleged perpetrators police officers, if they succeed in acquitting their clients (which as is shown herein happens in most of the cases). According to Presidential Decree 281/1993, following the acquittal of a police or fire brigade officer in a criminal case against him/her for an action committed while on duty, the lawyer of the officer's choice can be reimbursed "up to three times the prevailing minimum remuneration" for all the actions carried out during all stages of the investigation and all court hearings. So, for a case reaching the Supreme Court, after having gone through all stages of the investigation and through two judicial councils, this remuneration can reach 16,000 euros; for a case ending with an acquittal at the Appeals Court the remuneration can reach 9,000 euros. If the alleged victim of police abuse sought available free legal aid, after demonstrating that s/he is in financial need, s/he would get a not a lawyer of his/her choice but a service lawyer appointed by the Bar Association or usually the court -selected among mostly young inexperienced lawyers who subscribe to this service, and who will be paid the absolute minimum.

## **7. Introduction to the Table.**

In the Table we have listed 117 cases of ill-treatment and misuse of firearms and five police raids to Romani settlements documented in the AI-IHF,<sup>125</sup> ERRC-GHM<sup>126</sup> and OMCT-GHM<sup>127</sup> reports released in 2002-2003 with a summary of the main -if any- administrative and/or judicial investigations of each case.

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<sup>125</sup> [http://www.greekhelsinki.gr/bhr/english/special\\_issues/ai-ihf-torture-background.html](http://www.greekhelsinki.gr/bhr/english/special_issues/ai-ihf-torture-background.html)

<sup>126</sup> [http://www.greekhelsinki.gr/bhr/english/organizations/ghm/greeceE\\_2003.rtf](http://www.greekhelsinki.gr/bhr/english/organizations/ghm/greeceE_2003.rtf)

<sup>127</sup> <http://www.omct.org/base.cfm?page=article&num=3722&consol=close&kwrd=OMCT&cfid=835466&cftoken=36198769>

Cases	Name (s)	Age at incident	Nationality ethnic origin	Location of violation	Date	Allegation	Authority(ies) implicated	Disciplinary
1-2	Lazaros Bekos, Eleftherios Koutropoulos	17 18	Roma	Mesolonghi Police Station	08.05.1998	ill-treatment	Police	SAI was recommended  be disciplined suspended Following Hellenic however officer was
3-8*	six detainees mentioned in the 2001 CPT Report	unknown	2 Albanians, others unknown	Hania Police HQ (Crete), Igoumenitsa Police HQ, Piraeus Port Police Station	September - October 2001	ill-treatment	Police, Greek Army, Piraeus Port Police	OAI was related allegation Igoumenitsa Allegation unsu
9	Ilias Hatzidiakos	40	ethnic Greek	Rhodes	06.07.2001	ill-treatment	Police	SAI launched office  the Disciplinary the Suspension dismissal,
10	Andreas Kalamiotis	21	Rom	Aghia Paraskevi Romani settlement, Greater Athens	15.06.2001	ill-treatment verbal abuse	Police	PI launched four
11-14.	Yannoula Tsakiri, Pavlos Christodoulopoulos Michalis Aristopoulos  Athanasios Sainis	21 22 21 19	Roma	Aspropyrgos Romani settlement, Aspropyrgos Police Station,  near Athens	28.01.2002	ill-treatment (which led to Ms. Tsakiris' miscarriage) verbal  abuse	Police	PI into a of ill-treatment miscarriage  suspension crim
15-17*	Astrit Lleshim, Kastriot Rrapi, Dashmir	unknown unknown unknown	Albanians	Krystallopigi Police station, Greek-Albanian border	13.06.2001	ill-treatment	Police	PI launched or b was

	Troshku	wn							
18-19*	Blerina Meçe, Luftim Krosi	19 unkno wn		Kakavia, Greek- Albanian border		ill-treatment	Police	PI launched fo	
20	Arjan Hodi	24	Albanian	Police station of Mytilene, island of Lesbos	24.03.2 001	ill-treatment	Police	SAI laun officers Police D facing cashiering service They were appe case wa Second Disciplinar unkn police c	
21-22	Joseph Emeka Okeke	28	Nigerian	Hellenikon Detention Facility, Athens	25.06.2 002	ill-treatment,	Police	Okeke: allegation	
	Yannis Papakostas	20	ethnic Greek	Aspropyrgos Police Station, Athens	14.08.2 002	electro- shock		Papako	
23-44	Rangasamy Nadaraja and other 21 detainees	unkno wn	Sri Lankan Tamil, others from Iraq, Bangladesh , Sri Lanka, Sierra Leone, Kenya	Hellenikon Detention Facility, Athens	12.06.2 001	ill-treatment	Police	Ministry of information archives o	
45-55	11 asylum seekers, one of them N.Z.	ages 17 to 36	asylum seekers from Turkey	Coast Guard Facility, Hania, Crete	30.05.2 001	ill-treatment, sexual abuse (N.Z)	Coast Guard	SAI was la whic guard offic with military-ty the barra four were s days imprisonm	

56-57	Paraskevas Tranteros  Dimosthenes Argyroudis	14  13	ethnic Greek  ethnic Greek	Kassandria Police Station, Halkidiki	19.08.1 994	ill-treatment	Police	SAI conclu no li  part of a
58	Refat Talili	16	Albanian	Aghios Stephanos, Greater Athens	08.02.2 001	ill-treatment	Police	SAI laun officers the Police D the cashierin sus dismissal, po appeale Ins Disciplinar unkr according t Seco Police bo s
59-63	Theodore Stephanou, Nikos Theothropoul os Nikos Theothropoul os Nikos Tsitsikos Vassillis Theothoropou los	17 19  18  23 17	Roma	Argostoli Police Station, island of Cephalonia	04.08.2 001	ill-treatment	Police	SAI was la tha doing arose po  2 P  on allegatic dis personal d no p  was found
64-65	R and his brother	unkno wn	ethnic Greeks	centre of Athens	08.05.2 001	inhuman/de grading treatment	Police	A SAI wa polic discipline unknov

								officer ha pending C
66	Marinos Christopoulos	21	Rom	Zephyri, Athens	24.10.2 001	fatal shooting	Police	SAI launched the s dismissal o Following the Chief of police off
67	Gentjan Çelniku	20	Albanian	centre of Athens	21.11.2 001	fatal shooting	Police	to the First facing cashiering. he shoul decision up Disciplin the police
68	Nikos Leonidis	18	Pontic Greek	Thessaloniki	25.03.2 000	fatal shooting	Police	SAI was la with the pe by dism Disciplinar the p
69	Stephanos Sapounas	32	ethnic Greek	Ano Liosia, Athens	03.11.1 996	fatal shooting [Mr. Sapounas died on April 17, 1994]	Police	SAI was l police discipline suspens and a fift suspe

70	Anastasios Mouratis	45	Rom	Livadia, central Greece	20.11.1996	fatal shooting	Police	SAI was la officer discipline suspens He had als f during the
71	Marko Bulatovi	17	Serb	Thessaloniki	23.10.1998	fatal shooting	Police	SAI was police discipline suspens  by dismissa susp duty pendin
72	Angelos Celal	29	Rom	Halkidona, Greater Thessaloniki	01.04.1998	fatal shooting	Police	SAI wa absolve officers o
73*	Ferhat Çeka	67	Albanian	Aghia Ioanna, Greek Albanian border	08.03.2002	shooting resulting in injury, ill-treatment	Greek Army	SAI was la which disciplin impriso
74*	Afrim Salla	15	Albanian	Kastoria, Northern Greece	04.06.2001	shooting resulting in  paralysis	Police	Ministry  the discipl case
75	Kreshnik Shenaj	17	Albanian	Kakavia, Greek Albanian border	16.11.2000	ill-treatment	Greek Army	Ministry of information archives o
76	Bledar Quoshku	23	Albanian	Kastoria, Northern Greece	01.11.2000	fatal shooting	Police	Ministry  the discipl case
77	Arensto Nesto	26	Albanian	Megara Police station, near Athens	15.04.2002	ill-treatment	Police	Ministry  the discipl case

<b>78</b>	Andreas Mermingousis	unknown	ethnic Greek	Chios Police station, island of Chios	01.05.2001	ill-treatment	Police	PI was laur police
<b>79</b>	Yannis Christakis	17	ethnic Greek	Thessaloniki	31.01.2001	ill-treatment	Police	SAI was la wrong-doin of
<b>801</b>	Melpo Koronaïou	unknown	ethnic Greek	centre of Athens	14.04.1995	ill-treatment	Police	PI was la officer with a thre suspensi followi convictio of suspens
<b>81-85</b>	Speros Christodoulopoulos Christos Papadimitriou Stavros Stefanou Nikos Theodoropoulos Apostolos Sainis	17 64 22 20 17	Roma	Aghios Stefanos, Athens	07.10.2002	ill-treatment	Police	
<b>86-88</b>	Thomas Michalopoulos Yiorgos Michalopoulos Fotis Bazakas	21 20 22	Roma	Police Station of Zephyri, Athens	16.07.2002	ill-treatment	Police	SAI was conc liability ar the police as the Rom any pol d
<b>89-90</b>	Yiorgos Panayotopoulos Thanassis Panayotopoulos	16 17	Roma	Zacharo, Pyrgos (Peloponnesse)	01.11.2001	ill-treatment	Police	
<b>91</b>	Jahangir Alam	25	Bangladeshi	Eginition Hospital, Athens	19.09.2001	forceful sedation	Police	Unspecifi
<b>92</b>	Onuchukwu Ucheanna Ezekiel	unknown	Nigerian	Dromokaitio Psychiatric Hospital, Athens	20.10.2001	forceful sedation, ill-treatment	Police	Unspecifi
<b>93-95*</b>	Ligor Halimi	41	Albanian	Kristalopigi crossing point,	15.09.2003	ill-treatment	Police	SAI was la tha

	Mili Halimi	43		Greek Albanian border				arose on the officer's
	Rahman Pashollari	62						
<b>96-97</b>	Vullnet Bytyçi	18	Albanian	Kristalopigi crossing point,	23.09.2003	fatal shooting (Bytyçi) shooting,	Police	
	Luan Metaliaj	unknown		Greek Albanian border				
<b>98-100*</b>	Leonard Shëmbilko	29	Albanian	Kastoria, northern Greece	22.09.2003	ill-treatment	Police	
	Dashamir Brakolli Sokol Hallko	26 unknown		and Mesopotamia Police station				
<b>101*</b>	Gani Ibrahim Rama	35	Albanian	Greek -Albanian border	27.05.2003	wounded by gunshot	Greek Army	
<b>102-104*</b>	Sokol Allkja	25	Albanian	unknown	19.09.2003	missing	unknown	
	Ardian Allkja Edmond Sula	31 unknown						
<b>105*</b>	Arjan Torka	unknown	Albanian	Kristalopigi crossing point, Greek-Albanian border	04.10.2003	ill-treatment	Police	
<b>106-111*</b>	six persons ill-treated during investigation of B. Qoshku case (see case 77 supra)	unknown	Albanian	Kastoria, northern Greece	01.11.2000	ill-treatment	Police	
<b>112-115*</b>	four persons injured  no names given	unknown	Albanian	island of Corfu	26.07.2001	wounded by gunshots	Coast Guard	
<b>116*</b>	Halim Munga	unknown	Albanian	Palaba village, Greek-Albanian border	01.12.2001	fatal shooting	Police	
<b>1173,*</b>	AK, son of D	32	Albanian	Kastoria, northern Greece	02.11.2002	fatal shooting	Police	
<b>POLICE</b>								



## **RAIDS**

<b>1</b>	Romani settlement at Gallikos River	N/A	Roma	Thessaloniki	07.07.2000	ill-treatment, racial profiling	Police	
<b>2</b>	Romani settlement at Nea Zoi	N/A	Roma	Aspropyrgos, Athens	April 2001	ill-treatment	Police	Unspecified inquiry, c
<b>3</b>	Romani settlement at Nea Alikarnassos	N/A	Roma	N.Alikarnassos, island of Crete	12.07.2001	racial profiling, inhuman treatment	Police	PI, cas
<b>4</b>	Romani settlement at Nea Zoi	N/A	Roma	Aspropyrgos, Athens	28.01.2002	racial profiling, ill-treatment	Police	PI, cas
<b>5</b>	Romani settlement at Nea Zoi	N/A	Roma	Aspropyrgos, Athens	01.07.2002	racial profiling, ill-treatment	Police	Unspecified inquiry, c

### **KEY**

PI: Preliminary Investigation (formerly known as "unofficial investigation")  
 OIA: Oral Administrative Inquiry  
 SAI: Sworn Administrative Inquiry

### **REFERENCES**

1. Cases 1-80 are from AI/IHF Report Greece: in the shadow of impunity, ill-treatment and the misuse of power.
2. Police Raids 1-5 and cases 81-90 are from ERRC/GHM Cleaning Operations: Excluding Roma in Greece, Co
3. Cases 91-117 are from OMCT/GHM Report Torture and other forms of ill-treatment in Greece in 2003 – aliens, October 2003

### **NOTES A**

\* On October 29, 2003, GHM addressed a letter to the Deputy Appeals Court Prosecutor of Kozani, Thanasis Karamanolis, Instance Prosecutors and Courts in the border areas of Florina and Kastoria, calling upon him to re-open investigations or launch new ones in the border areas. This letter is included in the OMCT Report and also in a OMCT Appeal, available at <http://www.omct.org/displaydocument.asp?DocType=Appeal&Language=EN&Inquiry=1>. The appeal concerns Albanians who were victims of human rights abuses committed by Greek police or military in the Greek-Albanian border. Out of the 117 in the OMCT Report, cases no 3-4, 15-17, 18-19, 73, 74, 93-95, 98-100, 101, 102-104, 106, 111, 112-115, 116 and 117, were included in the OMCT Report. The Deputy Appeals Court Prosecutor of Kozani. On November 17, 2003, Deputy Appeals Court Prosecutor answered to GHM with a paragraph answer, the Deputy Appeals Court Prosecutor observed that "...we investigated the cases referred to in your request. Nevertheless, we did not find any of factors that would justify further investigation." (Letter available at <http://www.greekhelsinki.gr/bhr/english/organizations/>)

### **NOTES B**

GHM has lodged numerous complaints with the Greek Ombudsman's Office in relation to cases 10, 11-14, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, as well as in relation to police raids 2, 3, 4 and 5. In practically all cases, the Ombudsman's office either seemed to uncritically accept the state authorities' account of the events. It should be noted that in cases 10, 11-14, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, the Ombudsman's office criticised the state authorities involved, without however taking any further action. Thus, in the case of case 67, the Ombudsman's Office noted that there were discrepancies in the police's account of the incident and noted that such a serious allegation (the Ombudsman however did not call for the disciplining of those police officers involved and "meticulous" PI). Similarly, the Ombudsman's office expressed his concern over the non-suspension of police officer Tyllianakis who killed Mr. Christopoulos pending the holding of the SAI (case no 67). Following the Hellenic Police's answer to the Ombudsman's letter while it still had its concern over police officer's Tyllianakis non-suspension, it considered that the Hellenic Police exercised its power of discretionary power. Finally, the Ombudsman's office investigated the allegations of forceful sedation of patients in psychiatric hospitals (cases no 92-93). While it noted that the allegations had not been fully corroborated, it also noted that the authorities did not fully disprove the allegations; the Ombudsman's letter to the Ministry of Health concluded that such incidents take place in the future.





## Part II: State violence against Women in Greece

### Introduction: General information on the character of Greek society and women's place in it

The rights of women and children kept on being violated in 2003, a situation most evident in the trafficking in persons for forced prostitution – with the judicial systems both in Greece and in the countries of origin failing the victims. Moreover, domestic violence<sup>128</sup> is still considered an issue that belongs to the “private sphere”, due to the lack of legal provisions, the inefficiency of police forces and the unwillingness of courts to move further than imposing light sentences on perpetrators.<sup>129</sup>

The cause for violence against women is the fact that Greek society does not recognize substantial equality between men and women in every day life. Violence against women is not generally portrayed in the media as a social problem which violates human rights and should be addressed by policies for prevention, prosecution and protection. Nevertheless, the patriarchal structures are still very strong in Greek society. As a result, many women stop working to provide care for dependent family members.

Even though, women have been entering the labour force in recent years, they are usually employed in jobs involving little power or responsibility and are less paid than men. Indeed, with a 6-year action for gender equality, focusing on women and politics, women and the economy, social rights and stereotypes, there have been amendments banning gender-based discrimination in the employment sector. For example, quotas restricting access by women to police schools have been abolished,<sup>130</sup> while armed forces no longer have a quota system, as a result of a Supreme Court decision.<sup>131</sup> Moreover, a quota system requires 30% of all local government candidates to be women.<sup>132</sup> However, despite Presidential Decree 105/2003 (Article 4.1) that places the burden of proof on the employer in sex discrimination cases – an incorporation of the EU Directive 97/80/EC<sup>133</sup> - gender-based division of labour still exists, thus producing generally unfavourable attitudes towards the hiring of women, their pay scales, and their professional development.<sup>134</sup>

Trade unions reported that lawsuits for sexual harassment were very rare, and only four women filed such charges in the past 4 years.<sup>135</sup> In all four cases, the courts reportedly imposed very lenient civil sentences. The General Confederation of Greek Workers (GSEE) women's section reported that sexual harassment was a widespread phenomenon, but that

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<sup>128</sup> For further information on domestic violence, see Annex: Part 2 on domestic violence to this report.

<sup>129</sup> Amnesty International (AI), Annual Report 2004, at <http://www.amnesty.org/ailib/aireport/index.html>

<sup>130</sup> Concluding Observations of the Committee on Economic, Social and Cultural Rights: GREECE, Thirty-second session (26 April – 14 May 2004), *Consideration of Reports Submitted by States Parties under Articles 16 and 17 of the Covenant*, E/C.12/1/Add.97, 14 May 2004, at <http://www.ohchr.org/tbruce/cescr/Greece.pdf>

<sup>131</sup> Committee on the Elimination of Discrimination against Women, 585<sup>th</sup> Meeting (AM), Press Release WOM/1361, *Greece Describes Wide Range of Legislation Promoting Gender Equality as Anti-Discrimination Committee Continues Exceptional Session*, 19/08/02, at <http://www.un.org/News/Press/docs/2002/WOM1361.doc.htm>

<sup>132</sup> U.S. State Department, Country Reports on Human Rights Practices - 2003: Greece, Released by the Bureau of Democracy, Human Rights, and Labor, 25/02/2004, at <http://www.state.gov/g/drl/rls/hrrpt/2003/27840.htm>

<sup>133</sup> CESCR Summary Record 6<sup>th</sup> meeting, 2004

<sup>134</sup> M. Magdalinos and H. Symeonidou, 1989, ‘Modeling the Fertility-Employment Relationship: Simultaneity and Misspecification Testing’, *European Journal of Populations*, 5, 119-143. H. Symeonidou, G. Mitsopoulos, K. Vezyrgianni, 2000, *Expected and Actual Family Size. Life- Cycle Events: A Follow-Up Study: 1983-1997*, Athens, National Center for Social Research (EKKE).

<sup>135</sup> U.S. State Department, Greece: Country Report on Human Rights Practices, 2003

women were discouraged from filing charges against perpetrators who are family members or co-workers for fear of social stigmatization, and economic dependency of female spouses on their husbands.<sup>136</sup> The absence of a clear legal ban of sexual harassment, which is now prosecuted only indirectly, makes the victims' burden even greater.

Empirical research regarding the crime of rape in Greece has shown that there is a widespread stereotype related to the crime, the perpetrator, and the victim. This stereotype is as deeply rooted in the conscience of mainstream society as it is in the conscience of the official bearers of authority within the criminal justice system (i.e. police officers, prosecutors, and judges).<sup>137</sup> The discriminatory attitudes of many police officers justifies women's lack of confidence in the law enforcement officers response to rapes, while the psychological state of the victim of much confusion and fear could lead to its being further victimized.

Indeed, research has shown that every year in Greece approximately 4500 rapes are estimated to be committed, from which only 270 are reported to the police, only 183 result in the arrest of a suspect, only 40 reach court adjudication, only 20 end in a conviction, and finally less than 10 rapists are sentenced to more than five years imprisonment.<sup>138</sup> On the other hand, 60% of rape victims experience feelings of guilt, and 35% of rape victims respond that they could have avoided their rape if they had reacted differently.<sup>139</sup>

There is no data on the extent of violence that Romani women suffer within their community. Taking into account however the highly traditional character of the Romani community of Greece, Romani women can reasonably be expected to be subjected to a variety of human rights abuses within their community. Moreover, Romani women, in their relations with the state and the society, suffer from the twin handicap of being both women and of Romani ethnic origin. Thus, the State should focus on implementing the recommendations of the Committee on the Elimination of Discrimination against Women (August 2002) and *"taking affirmative measures to eliminate discrimination against minority women, including...Roma women, who suffer double discrimination based on both sex and ethnic background."*<sup>140</sup> Equally problematic is the situation of the women of the Muslim (and predominantly Turkish in terms of national identity) minority of Western Thrace. Although technically Muslim minority women do have the option of turning either to the local muftis<sup>141</sup> (if they live in Western Thrace, as there are no Muftis in the rest of Greece) or to the competent Greek courts concerning family and inheritance law cases, the reality is different. Thus, many Muslim minority women, brought up in a highly conservative community, will be subjected to heavy criticism and social ostracism if they attempt to assert their rights before a Greek court.

In order to avoid a casual attitude of non-intervention in cases of discrimination, including violence against women, justified on the grounds of cultural relativism, it seems expedient for the State to *"place high priority on the introduction and implementation of comprehensive and holistic measures to address violence against women and girls in the family...and increase its awareness-raising measures, including zero-tolerance campaigns through the media and public education programmes, to ensure all forms of violence against women and girls, including domestic violence, are regarded morally and socially unacceptable."*<sup>142</sup>

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<sup>136</sup> CESCR Concluding Observations, 2004

<sup>137</sup> Tsigris, A., *Sexual Violence against Women and Children: Greek Report*, Athens 2002, p. 10.

<sup>138</sup> Tsigris, A., *Sexual violence yesterday, today and tomorrow*, daily newspaper «Kathimerini», 04/01/2002

<sup>139</sup> Tsigris, A., (2002), *Sexual Violence Against Women and Children: Greek Report* (in Greek), Kastaniotis ed., p.14.

<sup>140</sup> CEDAW Press Release, 19/08/02: [www.un.org/News/Press/docs/2002/WOM1361.doc.htm](http://www.un.org/News/Press/docs/2002/WOM1361.doc.htm)

<sup>141</sup> Religious leaders of the Muslim Minority of Western Thrace who are also endowed with judicial capacity in cases of family law.

<sup>142</sup> Committee on the Elimination of Discrimination against Women, Exceptional Session, 5-23 August 2002, CEDAW/C/2002/EXC/CRP.3/Add.9/Rev.1

Finally, Greece should fully implement all provisions of the Convention for the Elimination of All Forms of Discrimination Against Women, the Beijing Rules and Platform for Action and the Declaration on the Elimination of Violence Against Women, as these instruments provide detailed protection for women against violence in the family, in the community and at the hands of State officials. Moreover, they would recommend the Greek government to ratify the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime<sup>143</sup> and to implement its provisions.

## 1. Legal and institutional framework – a step from violence

Greece ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1983, entering no reservations, and the Convention's Optional Protocol in January 2002. Law 1342/1983 implements the Convention into Greek law, containing a full translation of the Convention into Greek. It should be noted that this law, however, has never been directly invoked by a Greek court.

Since the revision of the Greek Criminal Code in 1984, **rape** is included in the category of "*crimes against sexual freedom and economic exploitation of sexual life.*" Article 336 of the Greek Criminal Code states:

- "1. Whoever with physical violence or with threat of grave and direct danger forces another to extra-matrimonial intercourse or to tolerance or attempt of an indecent act, is punished with imprisonment of 5 to 20 years [kathexiri].*
- 2. If the act defined in the previous paragraph was committed by two or more individuals acting jointly, a sentence of at least 10 years is imposed."*

**Marital rape** is thus not considered a crime under the Greek Criminal Code, as rape is only punishable if extra-matrimonial.

**Domestic violence** is currently addressed only by the general provisions of Civil and Criminal Law and by other special laws. Domestic violence may be prosecuted if the woman victim chooses to press charges for bodily harm, regulated by articles 308, 308A, 309 and 310 of the Greek Criminal Code.

Despite the recommendations to Greece both by the Committee on Economic, Social and Cultural Rights (May 2004)<sup>144</sup> and the Committee on the Elimination of Discrimination against Women (August 2002)<sup>145</sup> to proceed with the adoption of legislation criminalizing domestic violence and marital rape and to strengthen its assistance to victims of domestic violence and marital rape, a related draft law, in the works for years, has not been submitted to the Parliament.

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<sup>143</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime G.A. res. 55/25, annex II, 55 U.N. GAOR Supp. (No. 49) at 60, U.N. Doc. A/45/49 (Vol. I) (2001), at <http://www1.umn.edu/humanrts/instree/trafficking.html>

<sup>144</sup> Concluding Observations of the Committee on Economic, Social and Cultural Rights: GREECE, Thirty-second session (26 April – 14 May 2004), *Consideration of Reports Submitted by States Parties under Articles 16 and 17 of the Covenant*, E/C.12/1/Add.97, 14 May 2004, at <http://www.ohchr.org/tbruce/csr/Greece.pdf>

<sup>145</sup> Committee on the Elimination of Discrimination against Women, Exceptional session 5-23 August 2002, Draft report, Rapporteur: Ms. Rosalyn Hazelle, Consideration of reports of States parties: Greece, Combined fourth and fifth periodic reports, CEDAW/C/2002/EXC/CRP.3/Add.9/Rev.1, 23/08/2002, at <http://www.un.org/womenwatch/daw/cedaw/cedawExsess/ConcComments/ConComGreece.PDF>

Under Greek law, there is no specific legislation addressing **sexual harassment** either, which is punishable only under general provisions of Civil and Criminal Law. Judicial proceedings are not gender-sensitive, making sexual harassment very difficult to prove as an “insult to personality” (civil law violation), or an “insult to sexual dignity”, or “abusive behavior” (criminal law violations). The crime of “indecent abuse of power”, which is probably closer to the notion of sexual harassment, is punishable only for employees in the public sector. Employees in the private sector do not have the protection of this provision. Meanwhile, a KETHI report in 2004<sup>146</sup> showed that 10% of the women questioned had been a victim, while 15% knew at least one friend that had been a victim. The majority of the perpetrators was male (97%) and actually directors (45%) or superiors in the hierarchy (18,3%). The majority of the harassment cases took place the first 2 years of the victim's contract (72,5%). The harassment usually occurred more than twice by the same perpetrator (almost 50%) or once (36,7%). In the cases when the administration took some protective measures (43,3%), those ended up harming the victim (30,8%) while the perpetrator received only some recommendations (30,8%). The majority of the victims stopped working at the same place after the harassment (78,3%) due to the victim's own decision (86,2%). 32,5% of the victims knew at least one more woman-victim and the perpetrator was usually the same person (79,5%).

In Greece, **prostitution**, as defined in Law 2734/99, is legal from the age of 18 and prostitutes must register at the local prefecture and carry a medical card that is updated every 2 weeks. However, legal prostitution has been sidelined, the legal prostitute thus falling into a state of financial and moral destitution and coming under the control of various parasites and pimps.<sup>147</sup> According to the U.S. State Department Country Report on Human Rights Practices for 2003 – usually using data provided by Greek authorities-,<sup>148</sup> fewer than 1,000 women were legally employed as prostitutes – with current figures giving an estimate of 600 legal prostitutes and 230 legal brothels running (in Athens)<sup>149</sup> – while approximately 20,000 women, most of foreign origin, worked as illegal prostitutes. According to experts, a significant number of these women were trafficking victims.

Law 3064/2002 (15 October 2002), entitled “*Combating trafficking in human beings, crimes against sexual freedom, child pornography and more generally on economic exploitation of sexual life and assistance to the victims thereof*” is the one that covers **trafficking** issues in Greece. It intended to criminalize and punish traffickers, by imposing heavy prison sentences under article 323a – sentences of up to 10 years for forcing an individual into prostitution through violence, threats or false promises – as well as to develop victim support. Moreover, article 351 par. 3 imposes imprisonment of at least 6 months to clients – estimated 1,000,000 men (30% of Greece's sexually active population).<sup>150</sup> However, there have been no cases of prosecution of clients, due to social conditions and fears of breaking up families;<sup>151</sup> Hellenic Police is moreover not known to have instructions to arrest clients.

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<sup>146</sup> Research Centre for Gender Equality (KETHI), *Sexual harassment in the working place*, 2004, at [http://www.kethi.gr/greek/meletes/2004/sexualiki\\_parenoxlisi\\_ergasia/Sexualikh\\_parenoxlish\\_ergasia.pdf](http://www.kethi.gr/greek/meletes/2004/sexualiki_parenoxlisi_ergasia/Sexualikh_parenoxlish_ergasia.pdf) [in Greek]. The research was conducted using a sample of 1200 women above 18 years old all over Greece. For more info on KETHI, see part on ‘Domestic Violence’.

<sup>147</sup> Lazos, Gregoris, *Trafficking in Greece in 2002*, a “Stop Now” report, p.5, at [http://www.stop-trafficking.org/database/STOPNOW\\_REPORT\\_en\\_2002.pdf](http://www.stop-trafficking.org/database/STOPNOW_REPORT_en_2002.pdf)

<sup>148</sup> U.S. State Department, Country Reports on Human Rights Practices - 2003: Greece, Released by the Bureau of Democracy, Human Rights, and Labor, 25/02/2004, at <http://www.state.gov/g/drl/rls/hrrpt/2003/27840.htm>

<sup>149</sup> Daily newspaper “Ta Nea”, 10/07/2004, at [http://ta-nea.dolnet.gr/neaweb/nta\\_nea.print\\_unique?e=A&f=17985&m=N18&aa=1](http://ta-nea.dolnet.gr/neaweb/nta_nea.print_unique?e=A&f=17985&m=N18&aa=1)

<sup>150</sup> See also Art. 351, paras. 1-2 of the Criminal Code.

<sup>151</sup> <http://www.helleniccomserve.com/archivedgreeknews33.html> and <http://www.helleniccomserve.com/archivedgreeknews33.html>



Presidential Decree 233/2003 was signed on 26 August 2003 and implements the victim assistance mechanisms of 3064/2002<sup>152</sup> *“Protection and assistance to the victims of crimes provided for in articles 323A, 349, 351 and 351A of the Criminal Code, in conformity with article 12 of Law 3064/2002.”* It authorizes security and shelter for victims, outlines duties of law enforcement officers to assist victims, and delays deportation of victims so they may receive services. Although the presidential decree provides significant improvement in Greece’s anti-trafficking victim protection and support, little has been done to provide victims with effective legal alternatives to deportation to countries where they may face retribution or hardship, ensure safe repatriation of victims, or ensure that they are not penalized for offences resulting from their having been trafficked. Therefore, the Aliens Act being still in force, women without travel documents are often treated by police as criminals and detained and deported, despite evidence indicating they were victims of trafficking.<sup>153</sup> Through mid-October 2004, indeed, only two recognized by the prosecutor trafficking victims were granted residence permits, and one of them was granted a working permit, even though some other victims had made applications for that status since September 2003.

Unfortunately, this situation has not changed much since 2002, when the Greek state was admitting that *“due to a lack of specific legislation on human trafficking, victims were being deported”*.<sup>154</sup> Thus, the same recommendations were repeated by the Committee on Economic, Social and Cultural Rights (May 2004),<sup>155</sup> that expressed its concern about the high numbers of trafficked women and children who are subjected to forced labour and sexual exploitation and who are often being deported to their countries of origin, rather than being granted a residence permit, reportedly in an expeditious manner and without the necessary procedural safeguards. In this framework it also urged Greece to intensify its cooperation with neighbouring countries in combating trafficking in persons.

While the Ministry of Health was formally assigned anti-trafficking coordination, YDAS (International Development Cooperation Department) or Hellenic Aid, of the Ministry of Foreign Affairs is responsible for funding developmental programs and NGO activities.<sup>156</sup> The equivalent of 1.7 million euros was provided in 2003 to Greek and foreign NGOs for protection-prevention programs.<sup>157</sup> The sum was to be raised to 2.5 million euros in 2004. Yet, through mid-October 2004, despite an announcement to the contrary, no funding has been provided to NGOs working on seeking out and defending the administrative and legal rights of trafficked victims, including providing legal aid to the victims that have managed to get residence permits in Greece and/or constitute themselves, through the NGOs, civil claimants in the court cases. YDAS funding goes usually to programs in countries where victims come from, sensitization campaigns in Greece, and shelters for victims, either exclusively for trafficked victims or in general for victims of violence against women, both not certified as conforming with any standards by the competent authorities though – which however, in mid-October 2004, were hosting only a handful of victims out of the hundreds freed by police over the years.<sup>158</sup>

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<sup>152</sup> Presidential Decree (P.D.) 233/2003, official gazette issue A 204/2003

<sup>153</sup> Prevention and Fight Against Trafficking: Institutional Developments in Europe – Greece Report, May 2003, at <http://www.state.gov/g/tip/rls/rpt/25017.htm>

<sup>154</sup> CEDAW Press Release, 19/08/02: [www.un.org/News/Press/docs/2002/WOM1361.doc.htm](http://www.un.org/News/Press/docs/2002/WOM1361.doc.htm)

<sup>155</sup> Concluding Observations of the Committee on Economic, Social and Cultural Rights: GREECE, Thirty-second session (26 April – 14 May 2004), *Consideration of Reports Submitted by States Parties under Articles 16 and 17 of the Covenant*, E/C.12/1/Add.97, 14 May 2004, at <http://www.ohchr.org/tbruce/cescr/Greece.pdf>

<sup>156</sup> YDAS, at [http://www.mfa.gr/english/foreign\\_policy/cooperation/index.html](http://www.mfa.gr/english/foreign_policy/cooperation/index.html)

<sup>157</sup> U.S. State - Office to Monitor and Combat Trafficking in Persons, “Trafficking in Persons Report”, 14/06/2004, at <http://www.state.gov/g/tip/rls/tiprpt/2004/33192.htm#greece>

<sup>158</sup> Weekly newspaper “Athens News”, *At last, justice for trafficking victims*, 11/06/2004, at [http://www.athensnews.gr/athweb/nathens.pmt\\_article?e=C&f=&t=11&m=A15&aa=1](http://www.athensnews.gr/athweb/nathens.pmt_article?e=C&f=&t=11&m=A15&aa=1)

The introduction of professional training on human trafficking issues to Hellenic Police (EL.AS.) officers has been a positive development.<sup>159</sup> No such training has been done for prosecutors and judges. Indeed, the police is the only agency effectively implementing law 3064/2002, thus succeeding in breaking up dozens of prostitution rings and setting free hundreds of victims.<sup>160</sup> In 2003, EL.AS. statistics showed the break up of some 49 alleged trafficking operations, leading to the arrest of 284 alleged traffickers, the freeing of 93 victims. Yet, only 28 of them were acknowledged as victims by the prosecutors, of which only 14 were taken to the Medecins du Monde (6) and the Holy Archdiocese of Athens - KESO (8) shelters.<sup>161</sup> None of them was still in the shelters by mid-2004, because they had either left the country or had moved out of the shelters.

Medecins du Monde operates since September 2003 a shelter for trafficked victims – however, victim protection measures and referral mechanisms remain weak.<sup>162</sup> KESO, affiliated with the Holy Archdiocese of Athens, operated battered women's shelters that received some trafficked women.<sup>163</sup> In May 2004, another shelter was created in north-western Greece (Ioannina). In August 2004, the state launched two additional shelters in Athens and Thessaloniki.

## 1.1 Rape and court attitudes

On February 1<sup>st</sup>, 1992, a 29-year-old Polish woman reported that *"a man from Poland stole her bag and when she chased him he ended up immobilizing her and raping her"*. The forensic report established that the woman had indeed been raped, while she herself recognized B.M., a man of Polish origin as the perpetrator.

An article on the case entitled *'The cry of a Polish woman, a rape victim that did not appear in court: "I can't stand being raped again by TV."* appeared on the daily newspaper "Eleftherotypia" in 2001<sup>164</sup>, since the main witness, that is the victim, was not present at the case heard before the Mixed Jury Court of Athens. The victim's letter was a punch *"in the publicity given to trials in Greece"*.

It was the defendant's letter read in court that "set free" the alleged perpetrator, her rapist, when she had to choose between his being sentenced and her public defamation and repetition of her psychological rape. On December 4<sup>th</sup>, 2001 her lawyer presented her letter to the court, by which she withdrew the charges.

B.M., the alleged perpetrator, charged with "rape, theft and bodily injury" had been arrested a few months before the trial and was detained awaiting trial in the local prison of Tripoli. His victim's letter made the criminal prosecution stop abruptly because as the letter read: *"...Having thought about it in a mature way, I can see clearly that the trial will have as an effect my being seriously traumatized psychologically speaking. I am already back in Poland with my family, trying to forget this case. My appearing in court and being subjected to the hearing will traumatize me, while all I want is to avoid the publicity that these trials get in Greece. I wish no further recollection of those events."*<sup>165</sup>

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<sup>159</sup> See [www.mfa.gr/english/the\\_ministry/temp/traffic1\\_en.html](http://www.mfa.gr/english/the_ministry/temp/traffic1_en.html)

<sup>160</sup> Greek Helsinki Monitor Press Release: May 18, 2004

<sup>161</sup> Data kindly provided by the Anti-Trafficking Unit in the EL.AS. Headquarters, on 25 June 2004.

<sup>162</sup> *Ibid.*

<sup>163</sup> Greek Helsinki Monitor press release: May 18, 2004

<sup>164</sup> Newspaper "Eleftherotypia", 05/12/2001, at

[http://www.enet.gr/online/online\\_p1\\_text.jsp?dt=05/12/2001&c=112&id=16672212](http://www.enet.gr/online/online_p1_text.jsp?dt=05/12/2001&c=112&id=16672212)

<sup>165</sup> *Ibid.*

In May 2004, the Mixed Jury Court of Chania (Crete) acquitted unanimously a 47-year-old computer science secondary school professor and three Bulgarians that were charged with the rape of a 30-year-old woman from Latvia, whom they had also recorded in video a year earlier in Heraklion.<sup>166</sup>

The crime took place in the Greek professor's apartment, where the Latvian woman was taken by a Bulgarian friend. Two more Bulgarian men were there and when she refused to have sex with all of them they gang raped her. The Latvian woman pressed charges against them at the police, leading to the arrest of the three of them, while the fourth escaped arrest. The rape had been confirmed by the forensic report findings and the video recording as well. The accused were detained awaiting trial. The professor claimed that they had not raped the alien woman but had sexual intercourse with her, a service for which she had already been paid as agreed. He also alleged that he had not taken part in the act as he was only recording the intercourse in video. The Latvian woman had described in detail what she had suffered both at the summary investigation and the ordinary investigation. However, 20 days later, giving a supplementary testimony, she stated that she did not wish the continuation of the judicial investigation for psychological reasons. The judicial authorities of Heraklion considered her statement to be insincere and the judicial council referred the case before a court of law.

The woman appeared in the Felony Court of Chania stating that she did not wish the trial to go on because she would suffer a psychological shock. The court accepted her statement as sincere – according to Article 344 of the Greek Criminal Code – and the acquittal proposal of the prosecutor, thus ending the criminal prosecution of all four defendants-charged with gang rape, the infliction of plain bodily injury and the breach of the law on “indecent act”.

Both cases indicate why very few rape cases reach the courts and are effectively prosecuted, as the law itself offers a “way out”, which implicitly encourages the blackmailing of the victims. This is even more so, if the victims are in a vulnerable position, being migrants – who may not afford a lawyer as well.

The crime of rape is prosecuted *ex officio*. However, there is an exception laid down in article 344 of the Greek Criminal Code that reads: *“In the cases of article 336 [about rape], criminal prosecution is carried out ex officio. However, the prosecutor may exceptionally, with a justified ruling approved by the appeals’ prosecutor, abstain from criminal prosecution or, if he has already ordered the criminal prosecution, introduce the case to the relevant misdemeanors’ judicial council; the latter can drop the criminal charges, considering the victim’s statement – or of the persons described under article 118 – that the publicity following the criminal prosecution will result in a grave psychological injury of the victim.”* This particularity in the prosecution of the crime of rape has been severely criticized by NGOs, because it allows for practices such as blackmails, corruption, bribery and defamation to take place behind the scenes. In effect, moreover, the law rather than protecting the victim’s anonymity – for example with closed hearings – to avoid her being “raped all over again,” offers a way for the perpetrator to help secure impunity through the threat of public exposure of the victim.

In rape trials, no one usually examines the past of the perpetrator, except if used as a mitigating argument, i.e. he suffers from psychiatric problems or is an addict of drugs or alcohol and was not conscious of his actions. The past of the victim, however, is painstakingly scrutinized, and seems to be the object of trial. It is not considered unconstitutional to degrade

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<sup>166</sup> Macedonian Press Agency (MPA), *Gang rape acquittal*, 18/5/2004, at [http://www.mpa.gr/article.html?doc\\_id=456157](http://www.mpa.gr/article.html?doc_id=456157)

the victim of rape and insult her dignity, when her rapist is on trial. Questions like: “Why were you dressed like that?” are considered to be a routine.<sup>167</sup>

A case of rape trial that showed explicitly the intense psychological torture and personal courage necessary for the victim to serve justice, even when justice takes no special precautions to protect it both from its own inefficiencies and social stigma is that of the Ukrainian woman Olga B., a trafficking victim who was raped by a policeman in 1998. The policeman was acquitted for the rape by a court in Patras in May 2003, since the latter accepted that the defendant had intercourse with the victim’s consent. It has to be noted that the victim was not present in court (see below, ‘Trafficking’ section). On 29 March 2004, following a cassation of the acquittal by the Supreme Court, there was a re-trial on the rape charges. The hearing lasted for fifteen hours, including an excruciating four hour interrogation of Olga B. The questions made concerning points like the delay of the victim to report the rape (although she did immediately, once she escaped from the trafficker several months later) and her lack of attempts to show that she had been raped (even to the owner of the hotel where the rape took place) manifest that the court ignored the actual nature of a trafficking victim, that is under continuous bondage. Instead, the court treated the victim as if she could have and exercise her free will, even though her documents (passport) were in the hands of the bar owner who was forcing her into prostitution. And all this, despite the fact that in the beginning of the investigation the defendant had denied even the fact that he had known let alone had intercourse with Olga B. Following her detailed interrogation, the Mixed Jury Felony Court of Patras, in a split decision, acquitted the defendant giving him the benefit of the doubt – so voted the four lay jurors, while the three judges found the defendant guilty – despite the prosecutor’s motion to find the defendant guilty. On 5 April 2004, the Appeals Prosecutor of Patras appealed against the acquittal, and hence the trial on the rape charges would be repeated at a Mixed Jury Felony Appeals Court on 8 December 2004.

## 2. Trafficking: a state routine

Greece is a country of transit and destination for women, men, and children trafficked for the purposes of sexual exploitation and forced labour. Most victims come from Eastern European countries and the former Soviet Union, including Ukraine, Russia, Moldova, Bulgaria, Albania and Romania. Women from many other countries are trafficked to Greece, in some cases transiting on to Cyprus, Turkey and the Middle East.<sup>168</sup> There is a range of estimates of number of trafficking victims in Greece in 2003: 40,000 women and children, mostly between the ages of 12 and 25, trafficked each year for prostitution (U.S. State Department),<sup>169</sup> 17,000 trafficked women and girls at any given time (Greek newspaper citing NGO sources),<sup>170</sup> more than 30,000 non-Greek trafficked women (Medecins du Monde),<sup>171</sup> 20,000 women, including 1,000 girls between the ages of 13 and 15 (“Athens News”),<sup>172</sup> and approximately 20,000 victims at any time, and another 50,000 passing through Greece annually to enter Europe (Human Rights Watch).<sup>173</sup>

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<sup>167</sup> E. Leontidou, in conference proceedings “Violence: Zero Tolerance”, Athens, January 1999, organized by the NGO Democratic Women’s Movement, as part of the European Union program DAPHNE.

<sup>168</sup> U.S. State - Office to Monitor and Combat Trafficking in Persons, “Trafficking in Persons Report” (April 2003 – March 2004), 14/06/2004, at <http://www.state.gov/g/tip/rls/tiprpt/2004/33192.htm#greece> and Greek news site “IN.GR”, *U.S. State department ‘saw’ partial development in trafficking in persons in Greece, yet it is under watch*, 14/06/2004, at <http://www.in.gr/news/article.asp?lngEntityID=545258>

<sup>169</sup> U.S. State Department, Greece: Country Report on Human Rights Practices, 2003

<sup>170</sup> [www.themercury.news.com.au/common/story\\_page/0,5936,8190050^401.00.html](http://www.themercury.news.com.au/common/story_page/0,5936,8190050^401.00.html)

<sup>171</sup> <http://www.iabolish.com/news/press-coverage/2003/afp09-12-03.htm>

<sup>172</sup> <http://www.helleniccomserve.com/archivedgreeknews33.html>

<sup>173</sup> Prevention and Fight Against Trafficking: Institutional Developments in Europe – Greece Report, May 2003, at <http://www.state.gov/g/tip/rls/rpt/25017.htm>

According to a 2002 research by Dr. Gregory Lazos, Assistant Professor of Criminology at Panteion University in Athens,<sup>174</sup> there were six principal networks supplying prostitution in Greece with immigrant women: a Russian, a Ukrainian, a Balkan, an Albanian and to a lesser extent a Central European and an African network. The nationalities of the women forced into prostitution and of illegal prostitutes were significantly more diverse than in 2000, with victims coming in significant numbers, from: Belarus, Nigeria, Uzbekistan, and in smaller numbers from Austria, Yugoslavia, Iraq, Pakistan, Singapore and Sierra Leone, while the police also found in the hands of traffickers women from Denmark, the United Kingdom, Colombia, Norway and Rwanda. Also, in 2002, bars were the backbone of forced prostitution, absorbing more than 9,000 immigrant women, that is 56% of the women forced into prostitution. Call-girl prostitution, with the client getting into contact with the prostitute through ads and her visiting him at a place he indicates, came second.

Greece still does not meet the minimum standards for the elimination of trafficking and the government should fully implement the Presidential Decree to cease the detention and removal of victims and should finalize the protocol with Albania on the return of child victims.

Two years after the publication of Law 3064/2002 and more than one year after the publication of Presidential Decree 233/2003, the State, despite repeated calls and specific proposals, has failed to approve the programs offering effective and comprehensive professional legal aid, within the framework of articles 3, 8 and 10 of Presidential Decree. By mid-October 2004, only a handful of victims have adequate legal assistance, provided by GHM or paid by the victims themselves, and are thus able to constitute themselves civil claimants in the criminal cases and file for compensation in civil courts. The government should implement immediately comprehensive programs to benefit all –many hundreds of- victims that the police sets free from organized crime rings and –most of them– are not even aware of the compensation they are entitled to nor are they familiar with the legislation covering effective legal aid matters.

Indeed, there are plans of cooperation with the ministries of Public Order and Justice in order to train police officers and court officials. However, while Hellenic Police appears to be efficiently trained in the new legislation and has a good record of arrests [see above] - the inadequateness of the measures makes trafficking victims afraid to file complaints with the Greek authorities, and therefore remain trapped in abusive situations and the human rights abuses committed against them go unpunished.<sup>175</sup> Moreover, there is a lack of cooperation between the police and NGOs immediately after the arrest of each trafficking victim so that they are fully aware of their rights, in the framework of the NGO memorandum sent to the Ministry of Public Order – which is still pending. In 2003, although police cooperation with NGOs for adult victims with legal status had improved, still, child victims over the age of 13 were subject to mandatory removal from Greece as unaccompanied minors. These removals were not coordinated with source countries. Despite earlier plans to do so, the government had not yet amended its policy for removals to Albania.

The lack of status has severely hampered NGO ability to fulfil the Presidential Decrees mandate for victim services. Since the government has not concluded a memorandum of understanding (MOU) with NGOs on victim assistance and referral, police has made ad hoc referrals for victims with legal status only. On 17 June 2004, 17 “Galatsi Group” NGOs sent a 25-points memorandum on the mostly negative developments concerning the fight against trafficking in persons in Greece to the Inter-ministerial Committee, requesting a meeting to jointly seek

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<sup>174</sup> Lazos, Gregoris, “Trafficking in Greece in 2002”, a “Stop Now’ report at [http://www.stop-trafficking.org/database/STOPNOW\\_REPORT\\_en\\_2002.pdf](http://www.stop-trafficking.org/database/STOPNOW_REPORT_en_2002.pdf)

<sup>175</sup> GHM-MRG-G comments on Greece’s replies to the UN Committee on Economic, Social and Cultural Rights (CESCR), April 2004.



solutions. By mid-October 2004, there has been no reply.<sup>176</sup> What is needed is a unified system of shelters to include both the state ones to be created and the NGO ones running with state funding. NGO shelters have to become equal to the aid-protection units, as they are specified under Presidential Decree 233/03, so that the victims that turn to the former can be recognized as such. Additionally, there is a lack (or absence) of police protection-guarding of the reception centers/shelters and the victims when they have to move from the shelters.

Moreover, during 2003, the implementation of the Presidential Decree had not progressed to the point of providing residency for victims illegally present in Greece. However, from the 17 that have stayed at the shelters and the others that have received help without having stayed there, only about half a dozen had been brought to them by the police. This is a rough indicator of the fact that there are so many more out there, including in the Amygdaleza detention facility (estimated number: 150),<sup>177</sup> who are trafficking victims but the state cannot recognize them as such as they are afraid to testify – thus showing the inadequate state protection – or were arrested as undocumented migrants before and there is no efficient system to lure them into denouncing the traffickers. NGOs have been denied access to the Amygdaleza facility.

The issue of granting residence permits to trafficking victims has been recently solved albeit with considerable delay. On 3 June 2004, GHM being the legal representative of 2 trafficking victims received the first two temporary and unofficial residence permits according to the relevant legal provisions.<sup>178</sup> On 25 June 2004, Olga B. got the first ever official residence permit, after the technical problems were solved – since the Ministry had no provisions for permits for trafficking victims that were involved in trafficking trials and had to issue special stickers for the passports instead. Unfortunately, by mid-October 2004, Olga B. –along with another trafficking victim- was the only ones with fully valid permits –stickers on their passports, as all other applications had been stalled. Moreover, Olga B. was the only victim to be issued a work permit, on 19 September 2004.

Nevertheless, the overwhelming majority of trafficking victims are often expeditiously repatriated to their countries of origin, without being granted residence permits and without necessary procedural safeguards<sup>179</sup> – even though court prosecutors may allow victims to remain in Greece legally and press charges against traffickers, many continue to be deported. Thus, after being repatriated, the victims can not be at justice's disposal, something that impairs both the conviction of traffickers and the proper compensation of victims. According to Greek Police records, there are cases of women who had been deported and who returned to Greece as many as eight times.<sup>180</sup>

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<sup>176</sup> Memorandum for trafficking in persons sent to the Minister of Justice (17/06/2004), signed by 17 “Galatsi Group” NGOs, including: Doctors of the World (Médecins du Monde), Doctors without Frontiers – Greece (Medecins Sans Frontières), Amnesty International – Greek section, Transparency International Greece, Greek Network of Women in Europe, Greek Helsinki Monitor, Medical Rehabilitation Centre for Torture Victims – Athens, Centre of Research and Action on Peace – Winpeace, Center For Research and Support of Victims of Torture and Social Exclusion, Mediterranean Women Research Center, Center for the Support of Family of the Holy Archdiocese of Athens, Support Center of Repatriated Immigrants, “Klimaka” – Vehicle of Development of Human and Social Capital, Social Aid of Greece, Social and Educational Action-Center for the Support of Children and Family and New Life.

<sup>177</sup> Daily newspaper “Ta Nea”, *Note-book: Souls shelter...*, 10/07/2004, at

[http://ta-nea.dolnet.gr/neaweb/nta\\_nea.print\\_unique?e=A&f=17985&m=N25&aa=2](http://ta-nea.dolnet.gr/neaweb/nta_nea.print_unique?e=A&f=17985&m=N25&aa=2)

<sup>178</sup> GHM press release, 4/06/2004.

<sup>179</sup> Concluding Observations of the Committee on Economic, Social and Cultural Rights: GREECE, Thirty-second session (26 April – 14 May 2004), *Consideration of Reports Submitted by States Parties under Articles 16 and 17 of the Covenant*, E/C.12/1/Add.97, 14 May 2004, at <http://www.ohchr.org/tbru/cescr/Greece.pdf>

<sup>180</sup> Lazos, Gregoris, “Trafficking in Greece in 2002”, a “Stop Now” report at

[http://www.stop-trafficking.org/database/STOPNOW\\_REPORT\\_en\\_2002.pdf](http://www.stop-trafficking.org/database/STOPNOW_REPORT_en_2002.pdf)

The victims involved in trafficking trials are faced with defendants involved in organized crime – as now defined by article 187 of the Criminal Code – who may have multiple indictments on the crimes of trafficking and related offences and who have engaged high level and expensive lawyers (see below the cases of Olga B. and Gina M.). Best-case scenario for victims is mainly the support of lawyers offering their services on a voluntary basis and/or non-governmental organizations that obviously do not have the same resources available. In the worst of cases, for the hundreds of victims that have no such support, they cannot effectively constitute themselves civil claimants from the beginning of the inquiry stage, nor the filing of lawsuits for compensation, not even the appointment of an effective representative legal agent in order to ensure their presence at the inquiry and trial – especially when the victims return to their countries.

Many activists have also alleged that police often accepted bribes from traffickers or were involved in trafficking rings,<sup>181</sup> something confirmed by the Pan-Hellenic Confederation of Police Officers and the Ministry of Public Order.<sup>182</sup> Thus, while the anti-corruption unit of the Hellenic Police stated that the problem was decreasing, human rights and anti-trafficking groups said that anti-corruption efforts needed to be a higher government priority.<sup>183</sup>

### The Olga B. Case

On 23 May 2003, a Mixed Jury Felony Court of Patras acquitted a police officer who was accused of raping a 19-year old Ukrainian trafficking victim, Olga B., in February 1998. Olga B. was however never summoned to be present at the proceedings. There were two summons issued to an address in Amaliada where the victim never lived, with current residents of that address having also signed sworn statements supporting that. If Olga's current address – reference to which is made in a letter of the prosecutor to the Ministry of Justice – was mentioned on the summons, or if the bailiffs had asked the police, he would have located Olga B. Worse, despite all this evidence, neither the local Amaliada court nor the Supreme Court did order ex officio any investigation into what appeared as a deliberate act of the bailiffs to present Olga B. as "of unknown address". Nor did the Minister of Justice request one. In view of this indifference, on 8 September 2003, Olga B. filed a complaint against the bailiffs.<sup>184</sup> On June 9, 2004 the Prosecutor's Office of the Court of First Instance of Amaliada, decided, under order EG 204/132-17/9-6-04 to drop all charges against the bailiffs. What has to be noted is that although this prosecutor's order shows that Olga had never lived at the address where the court bailiffs deposited the two summonses for her, the prosecutor stated that the bailiffs had acted without any intention, thus causing no harm to Olga. 17 NGOs have asked for the punishment of the bailiffs, the lack of which is mentioned also as an incriminating factor against the Greek state.<sup>185</sup> Legal counsel for GHM filed an appeal against the Prosecutor's decision. Both GHM and human rights sensitive journalists strongly criticized the Prosecutor's decision, prompting a -rather unfortunate, in the light of further developments- public announcement (25/6/2004) by the Greek Association of Prosecutors (GAP). The announcement not only characterized the comments as "malicious", "insulting" and "defamatory", but also claimed that "the prosecutor's order was totally justifiable". Nevertheless, on September 21, 2004, the Appeals Prosecutor of Patras upheld the appeal against the Misdemeanors Prosecutor's decision and called upon him to launch criminal proceedings against the two bailiffs on charges of false attestation.

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<sup>181</sup> U.S. State Department, Greece: Country Report on Human Rights Practices, 2003

<sup>182</sup> Hötzeltdt, Andrea, "Prevention and Fight Against Trafficking: Institutional Developments in Europe – Greece Report", Berlin Institute For Comparative Social Research (BIVS), May 2003, at [http://www.emz-berlin.de/projekte\\_e/pj37\\_1pdf/Greece.pdf](http://www.emz-berlin.de/projekte_e/pj37_1pdf/Greece.pdf)

<sup>183</sup> US State Department, Greece: Country Report on Human Rights Practices, 2003.

<sup>184</sup> Prosecutor's Office of the Court of Misdemeanors of Patras, Ref. No. ABM A03/1776.

<sup>185</sup> Daily newspaper "Eleftherotypia", *Tension for the court bailiffs' acquittal*, 22/06/2004, at [http://www.enet.gr/online/online\\_print.jsp?id=78990260](http://www.enet.gr/online/online_print.jsp?id=78990260)

In the absence of the victim at the trial, the court concluded that she had consented to sexual intercourse with the police officer, ignoring Olga B.'s multiple sworn testimonies to the contrary during the judicial investigation. The court gave as concurring argument for the acquittal that "a real rape victim denounces her rape immediately and not ten months later," while actually, Olga B. had waited that long because only then had she managed to escape from the traffickers. The court considered bondage under trafficking as regular "work" and ignored the possibility that such persons may not feel confident enough to denounce anything while in bondage conditions. This, even though in the same verdict the court had convicted four persons for the trafficking of Olga and of 13 other foreigners. The other two witnesses, who had testified on behalf of the victim at the preliminary hearings, were also not summoned and were not present at the trial.

Additionally, there had previously been a lack of due diligence in investigating the victim's claim of rape and the relating trafficking charges. The main judicial investigation "froze" for two-and-a-half years, thus resulting in the setting a court date after the end of the 5-year statute of limitation (prescription) of the misdemeanour charges (all but the rape one), a statute which is suspended for up to three years once defendant and witnesses are summoned for the trial. This delay is a clear violation of article 6 par. 1 ECHR on fair trial.

At the trial, the police officer was given a 2-year suspended sentence for breach of duty as a police officer since he knew that trafficking victims were being held in a bar, did not report the crime, and engaged in intercourse with one of the victims. The bar owner was sentenced to 3 years in prison and a fine for trafficking and three other defendants were also sentenced to two years in prison and a 3,000 euros fine each for assisting in the trafficking of women. However, all 4 co-defendants sentences were converted into fines as the court concluded that "a pecuniary fine is sufficient to deter them all from repeating the crime, after evaluating their characters and surrounding circumstances", although GHM is aware that this ring's two leaders were involved at least in one of the other two trafficking cases that reached the courts in 2003 and led to the dropping of charges for extending beyond statutes of limitation for one of them and to a similar convertible sentence for the other.

After initial rejections and much media pressure, the Prosecutor filed a motion for cassation (June 2003), but only for the acquittal of the police officer on the grounds that the verdict "lacked specific and detailed explanation," rather than asking for the cassation of the whole verdict on grounds of inappropriate summons of the victim. On 7 October 2003, Olga B. was again not summoned to court for a hearing concerning her case. The Supreme Court followed the Prosecutor's motion and, on 13 November 2003, issued its ruling that nullifies the first instance judgment only as concerns the rape charges. It is to be noted that the Supreme Court gave full copies of the two decisions documents to journalists who then covered the stories with full reference to the victim's name.

One consequence of this ruling was that Olga B. had to face two criminal trials: at first instance a retrial on the rape charges (19 March 2004) and at the appeals level a trial on the trafficking charges (21 June 2004). Moreover, there was the civil court trial for the compensation she was seeking (4 November 2004). And all these trials, without any state legal aid to pay for her lawyers. Olga B. cannot constitute herself civil claimant in the trafficking trial, since such possibility exists only through the beginning of the first instance court trial; since she was not present there, she has lost that right.

Her deportation was finally suspended by the Patras Prosecutor's Office as late as 16 January 2004, but only for the period until there is an irrevocable verdict on the trafficking case. It does



not cover the rape case, as the anti-trafficking law does not include among the offences for which protection (and suspension of deportation) is offered the crime of rape in the context of trafficking. So, a collateral result of the separation of the two cases by the Supreme Court is that Olga B. cannot be protected for the most serious of the crimes related to her trafficking ordeal. Then, Olga B. applied on 12 February 2004 for the special residence permit of article 44.7 of migration Law 2910/2001. The Secretary General of Western Greece informed GHM that the request was approved – the first ever such decision – but that the permit could not be issued as the state had forgotten to print the necessary stickers for such residence permits (so did the Secretary General of Central Macedonia where GHM applied for the residence permit of two other trafficking victims). So trafficking victims had to wait for an indefinite period of time for such stickers to be introduced, and face possible humiliating police street controls as potential undocumented immigrants whose legal presence in Greece need be confirmed at the police station.

The trial on rape charges took place on 29 March 2004 (postponed because of the defendant's absence). After a fifteen hour hearing, the Mixed Jury Felony Court of Patras acquitted the defendant giving him the benefit of the doubt. On 5 April 2004, the Appeals Prosecutor of Patras appealed against the acquittal, and hence the trial on the rape charges will be brought before the Mixed Jury Felony Appeals Court of Patras, on December 8, 2004. GHM would like to note that, as is the procedure in Greece, the names of the jurors were known before the trial date and jurors were not secluded for the intervening period.

On 21 June 2004 NGO representatives were present in court for Olga B's trial on appeal for the trafficking-related misdemeanors but it was once more postponed for 8 December 2004.<sup>186</sup>

### The Case of Gina M.

A high-profile case dating back to 1998 is that of Gina M., a 15-year-old trafficking victim.<sup>187</sup> The case, involving also the crimes of rape and abduction was covered by the media and was a source of concern for the Ministry of Justice since, in 2003, the Minister had personally intervened in order to prevent the prescription of offences and to lift the humiliating restrictions against Gina M., who was obliged to show up once a week, whereas the defendant charged with multiple offences and as the mastermind behind the prostitution ring was under obligation to show up only once a month. It had also gained publicity because of the false assurances given by the Prosecutor's Office to the Minister that the prescription of the crimes had been avoided; on the contrary, the prescription did happen and the restrictions were never lifted. Finally, there was also a fruitless call by GHM for the punishment of the judges responsible for the prescription of crimes in the particular case.

On May 17 2004, the court rejected the request submitted by Gina M.'s lawyer to lift the restrictions against her imposed because of the charge of illegal entry in the country six years ago; this offence has been prescribed and is also void as she has since obtained legal residency. Having deemed the restrictions as "remedial" – according to Prosecutor Emmanuel Rasidakis –, it was decided that Gina M. should appear before the examining judge once a month. On the same day, the trial for her case was postponed for September 20, 2004.

On 20/9/2004, counsel for the key defendant appeared before Three-Member Felony Appeals Court and called for the postponement of the case, arguing that his client was ill. The bench declined doing so and adjourned for 27/9/2004, when according to the documents forwarded

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<sup>186</sup> GHM press release, 22 /06/2004 and daily newspaper "Avghi", *Olga's rape trials scheduled for 8 December*, 22/06/2004.

<sup>187</sup> GHM press releases: 19/07/2003, 27/07/2003, 10/11/2003, 18/05/2004 and "Ios", daily newspaper "Eleftherotypia", *Gina M.'s never ending nightmare*, 14/07/2003 at [http://www.enet.gr/online/online\\_print.jsp?id=15906264](http://www.enet.gr/online/online_print.jsp?id=15906264)

by legal counsel for the defendant, his client would be able to appear before the court. Nevertheless, on 27/9/2004, legal counsel for the defendant presented fresh documents suggesting that the defendant's medical condition has actually worsened. The judges were not convinced and called for a forensics doctor's certificate and the appearance before the court of the state hospital's clinic director in the next day (28/9/2004). When the latter confirmed before the court the defendant's medical condition, the presiding judge could not refrain from commenting on the odd fact that defendants tend to be fall "suddenly" ill, a couple of days before their trials. Moreover, one of the judges noted that there were discrepancies between the two medical certificates advanced by counsel for the defendant. The case was finally postponed for November 8, 2004.

For the main defendant, the charges on the offences of pimping and pandering have been dropped as a result of the 5-year lapse (ruling Ref. No 2252/2003 of the Council of Appeals Court Judges of Athens). The court, when it convenes, will most probably identify additional charges to be dropped because of statutory limitation, due to the 5-year lapse until serving the summons. In addition, the indictment rulings (3056/2003 of the Athens Council of Misdemeanors Judges and 2252/2003 of the Council of Appeals Court Judges of Athens) do not contain references to the articles of the criminal legislation under which the defendants were referred to trial, a violation of article 139 of the Code of Criminal Procedure (CCP). Finally, the case has been referred to a court of non-competent jurisdiction (the Three-Member Felony Appeals Court), even though the charges include rape (even of juveniles), which fall under the jurisdiction of the Mixed Jury Court (articles 109, 111, 128 and 130 CPP). Thus, it is highly likely that the court will eventually refer the case to the Mixed Jury Court, which, in all probability, will not deal with the case before 2005, while this referral will lead to the prescription of all misdemeanors.

### 3. Discrimination targets

Violence against women is evidently an issue in Greece. Women belonging to vulnerable groups, like the Roma community or the immigrants are thus exposed to a higher possibility of being 'neglected' by the state, as the authorities may deal with their cases in a way that is far from being objective.

In its concluding observations of May 2001, the **Committee against Torture (CAT)** had recommended that:

*(c) Such measures as are necessary, including training, be taken to ensure that in the treatment of vulnerable groups, in particular foreigners and ethnic and national minorities, law enforcement officers do not resort to discriminatory practices;*<sup>188</sup>

Because there is a widespread discrimination against Roma people, the additional gender discrimination / vulnerability a Roma woman faces is underplayed. The following case of Yannoula Tsakiri is an indicative example.

On the morning of January 28, 2002, police officers raided a Romani settlement in the area of Nea Zoi in Aspropyrgos, Greater Athens. The police were accompanied by a judicial official, but allegedly did not produce any arrest or search warrants. They ordered all the Roma out of their

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<sup>188</sup> Concluding observations of the Committee against Torture: Greece. 08/05/2001.A/56/44, paras.83-88. (Concluding Observations/Comments), Twenty-sixth session, 30 April – 18 May 2001, at <http://www.nchr.gr/downloads/un%20cat%202001.pdf>

sheds, and forced those already outside to lie face down on the ground. The police officers searched, apparently indiscriminately, almost all the sheds in the settlement for drugs, while the Roma who had been assembled outside, were allegedly shouted and sworn at, and subjected to racist abuse. The conduct of police appeared to be deliberately intended to frighten and humiliate. **Yannoula Tsakiri**, a 21-year-old Romani woman who lived in the settlement, subsequently informed GHM that she had been assaulted by police officers. More specifically, she informed GHM that during the raid a police officer had shouted at a disabled 13-year-old boy to stand up, and then grabbed him by the arms to raise him. Ms. Tsakiri allegedly stepped forward to protect the boy, whereupon an officer allegedly violently pushed her away and another kicked her in the back, knocking her to the ground. Yannoula Tsakiri was two and a half months' pregnant at the time, and shortly afterwards started bleeding. Nevertheless, as Ms Tsakiri is undocumented, she was afraid of visiting a hospital. It was only after GHM almost accidentally was informed of her ordeal that it undertook to take her to the hospital on January 29, 2002, where she was found to have a partially detached placenta. Three days later, on February 1, 2002 Ms Tsakiri suffered a miscarriage. On the same day, February 1, 2002, legal counsel for GHM in his capacity as the legal representative of Ms Tsakiri, filed a criminal complaint against the unknown police officer who had kicked her and might have caused her miscarriage. Moreover, on February 24, 2002, GHM lodged a complaint with the Ombudsman's Office concerning the police raid in the Romani settlement and laying particular emphasis on Ms Tsakiri's ordeal.

On February 14, 2002, the Prosecutor ordered the Police of Aspropyrgos to launch a summary investigation into Ms Tsakiri's complaint. Considering that this was contrary to the interests of justice, as the police officer who allegedly kicked Ms Tsakiri might well serve at the Aspropyrgos Police station, two GHM members who were called to testify in the framework of the summary investigation submitted, on March 11, 2002, a Memorandum on behalf of Ms Tsakiri. In the Memorandum, GHM called upon the prosecutor to re-assign the conducting of the summary investigation either to a peace judge or to a different police department, in order to ensure impartiality and objectivity. The prosecutor nevertheless did not re-assign the case and the summary investigation into the allegations lasted many months; in fact, it was only in April 2003 that the penal brief was forwarded to the prosecutor by the police. The prosecutor would have probably shelved the case but for the intervention of the UN Special Rapporteur for Torture, Mr. Theo van Boven, who, jointly with the Special Rapporteur on violence against women, and the Special Rapporteur on contemporary forms of racism had addressed on July 11, 2003, a letter to the Greek government in which they underlined their concern about the allegations concerning the case of Ms Tsakiri.<sup>189</sup> On October 13, 2003, the Greek government informed the Special Rapporteurs that a judicial investigation had been launched into the allegations and that it was in progress.<sup>190</sup> Indeed, GHM had been informed that on September 11, 2003, the prosecutor had forwarded the penal brief of the case to the local peace judge and had ordered him/ her to launch a summary investigation; it is reminded that as early as March 2002, GHM had already requested the prosecutor to take such an action, a request that the latter had turned down, only to authorise it following the expression of concern by UN bodies. In July 2004, the prosecutor shelved the case with the note "unknown perpetrators." The prosecutor did so following a statement from a bailiff that she could not serve summons to Ms. Tsakiri so that she appears before the peace judge in order to identify the perpetrators (two years later...), as Aspropyrgos police had told the bailiff that Ms. Tsakiri had moved to an unknown address. Yet Aspropyrgos police certified to GHM, on September 9, 2004 (Ref. No. 6004/15/14-A) that police does not keep files of addresses and moves of the citizens and that no policeman

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<sup>189</sup> Distr. General, E/CN.4/2004/56/Add.1, 23 March 2004, Commission on Human Rights, Sixtieth session, Item 11 (a) of the provisional agenda, Report of the Special Rapporteur, Theo van Boven, para 650, at <http://daccess-ods.un.org/access.nsf/Get?Open&DS=E/CN.4/2004/56/Add.1&Lang=E>

<sup>190</sup> *Ibid.*, par. 651.

was known to have given such information to the bailiff. In relation to the administrative proceedings, GHM was informed on February 26, 2003, that the Hellenic Police had launched an Oral Administrative Inquiry (OAI) into the allegations but that it had been suspended, pending the outcome of the summary investigation.<sup>191</sup>

In the CAT observations (2001), the Committee was concerned about "*Evidence that the police sometimes use excessive or unjustifiable force in carrying out their duties, particularly when dealing with ethnic and national minorities and foreigners;*"<sup>192</sup> a concern that was indeed justified by years of allegations made by GHM and the relevant findings of the joint Amnesty International and International Helsinki Federation report "*In the shadow of impunity – Ill-treatment and the misuse of firearms*" (2002).<sup>193</sup>

The portrayal of a general xenophobia and "Albanophobia" climate among law enforcement officers has been further dealt with by a joint OMCT-GHM report (2003).<sup>194</sup> A series of serious incidents of ill-treatment, injury or death of Albanian citizens at the Greek-Albanian border has highlighted the inadequate or complete lack of investigation of previous such cases which leads to widespread impunity.

Blerina Meçe, was allegedly ill treated by police officers-border guards on 10/02/2001 during her transfer for deportation to the border-point of Kakavia, along with Luftim Krosi a co-passenger who attempted to intervene. According to her written and signed statement, dated 10 February 2001: "*When we arrived at Kakavia [a police officer] told me to collect all the rubbish in the bus and sarcastically told me to take the empty bottles to Albania because 'you Albanians are empty bottles'.*"<sup>195</sup> The administrative inquiry concluded that the incident that allegedly took place could not have happened as she had been arrested for theft and had been deported twice on 17/08/2000 and 11/07/2001 and not on 10/02/2001. GHM believe that EL.AS. and the Ministry were probably referring to another individual with the same name, an argument strengthened by the fact that the Ministry claimed to have no information on the case of Luftim Krosi either.

Thus, the Greek authorities should take all necessary measures to guarantee the physical and psychological integrity of all persons crossing its border and to punish the perpetrators in proportion to the seriousness of their acts.

#### 4. Detention Conditions

Both IGOs and NGOs have repeatedly observed that detention conditions in both detention centres as well as prisons fell below international human rights standards. Although improvements have been made, the general picture today is similar to that portrayed by UNCHR Athens in 2002 and CPT in 2001. In mid-2004, the Greek National Commission for

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<sup>191</sup> See Letter by Hellenic Police to the Ombudsman's Office, Ref. No. 1026/3/11/1-μθ, dated February 4, 2003, transmitted to GHM by Ombudsman's documents Ref. No. 3979/02/2.2 and 15454/02/2.2, dated February 26, 2003.

<sup>192</sup> Concluding observations of the Committee against Torture: Greece. 08/05/2001.A/56/44, paras.83-88. (Concluding Observations/Comments), Twenty-sixth session, 30 April – 18 May 2001, at <http://www.nchr.gr/downloads/un%20cat%202001.pdf>

<sup>193</sup> Amnesty International & International Helsinki Federation Report, "*Greece: In the shadow of impunity - ill-treatment and the misuse of firearms.*" (September 2002), at [http://www.greekhelsinki.gr/bhr/english/special\\_issues/ai-ihf-torture-background.html](http://www.greekhelsinki.gr/bhr/english/special_issues/ai-ihf-torture-background.html)

<sup>194</sup> OMCT and GHM, "*Torture and other Forms of Ill-Treatment in Greece: The Situation of Women, Roma and Aliens*", Report submitted to the EU Network of Independent Experts in Fundamental Rights at its Hearing of 16 October 2003

<sup>195</sup> Amnesty International & International Helsinki Federation Report, "*Greece: In the shadow of impunity - ill-treatment and the misuse of firearms.*" (September 2002), at [http://www.greekhelsinki.gr/bhr/english/special\\_issues/ai-ihf-torture-background.html](http://www.greekhelsinki.gr/bhr/english/special_issues/ai-ihf-torture-background.html)

Human Rights published a Korydallos Women's Prison visit report of which the main excerpt follow.

**“National Commission for Human Rights (NCHR) Report**  
(excerpts translated by GHM from the report available in Greek at  
[http://www.nchr.gr/media/word/nchr\\_visit\\_korydallos\\_prison.doc](http://www.nchr.gr/media/word/nchr_visit_korydallos_prison.doc))  
**Visit of a Special NCHR Committee to the Closed Central Women's Prison of**  
**Korydallos (June 28, 2004)**

*“3. Unfortunately, detention conditions in the main women's prison cannot be said to be satisfactory. Three to four women are assigned to each cell; in any case however, conditions are more tolerable than the ones at the men's prison, since the cells of the women's prison is bigger than those of the men's prison, while they also have a big window with ample access to sunlight and a few basic pieces of furniture. Inmates are allowed to circulate in the big, wide and long corridor that separates the two rows of cells. Moreover, there are also tables and chairs [located in the corridor] where the women inmates sit in groups. It should nevertheless be said that the sanitation facilities and especially the toilets are in bad shape.*

*The prison also has sixteen wards, as the deputy director [a woman] informed us. Out of those sixteen wards, we visited two big ones, packed with twenty seven and thirty five Gypsy women respectively (most of these women had been convicted for drug trafficking related offences. All of them sat on their beds which were located one right next to the other. There were no pieces of furniture or any chairs in these two wards). Furthermore, no provisions for the special treatment of those women suffering from psychological problems appeared to exist. These women were held in a different wing.*

*As for the other wards, a few drug addicts were held in two of them (three or four inmates in each ward), while as we were informed by the deputy director, one ward was vacant (it was out of commission).*

*We were unable to visit the ward located on the top floor, as the person that kept the key to the ward could not be found. This ward is of special interest, as it apparently houses habitual female delinquents who have committed a variety of criminal offences.*

*As the deputy director informed us, the original provision was for each ward to accommodate eight inmates. Consequently, the present allocation of inmates to the wards appears to be unbalanced. This is especially true in the case of the Gypsy women, who are concentrated into two fully packed wards, while an unused ward is available—located, however, in another wing.*

*4. General conclusion: this prison also suffers from overcrowding as well as from unbalanced allocation of inmates into cells. It accommodates about 480-500 female inmates while it was built for 80-100. As a building, it has been built according to specifications that would, ordinarily, ensure civilized and safe living conditions, more so than the men's prison. Overcrowding however leads to serious malfunctions and there is an immediate need for improvement. Moreover, it should be stressed that there are no doctors or even a specialized nurse in the women's prison on a permanent basis (doctors of all specializations visit the prisons twice a week). The female prison's medical staff consists of a female medical orderly – graduate of a Technical Educational Institution, as well as two medical orderlies doing their apprenticeship. The grave dangers stemming from this lack [of specialized medical personnel] are apparent.*

*The living conditions of those convicted for membership to the November 17 group who are in a different wing, are incontestably better than those for the other inmates (each one of the former has his own cell, which is quite spacious and has its own toilet facilities, a T.V., buzzer, an impromptu shared kitchen, a special courtyard where the November 17 inmates are jointly allowed access to on a daily basis for long stretches of time, both in the morning and in the afternoon). We have mentioned above some of the requests put forward by the inmates. The grave dangers from the non-existence on a permanent basis of a doctor for a community of more than 480+7 people, some of whom are drug addicts and chronically ill, as well for those who occasionally fall ill, are obvious."*

# Part III: State violence against children in Greece

## Introduction: children and torture in Greece

- *Definition of the child*

Following the recent amendments to the Greek Criminal Code, the definition of the child for criminal law purposes is now identical to civil law one. Thus, according to the Greek Civil Code (hereinafter GCC), the civil majority is from the age of 18 years old. Below this age a person is considered as a child or a minor.<sup>196</sup> Similarly, according to article 121 of the Criminal Code, delinquent minors are persons who commit a criminal offence while being eight to eighteen years old.<sup>197</sup> The minimum age of criminal responsibility is 13. (Article 126 CC).

Turning to other provisions concerning children in general, it is noted that education is compulsory from 6 to 16 years old (article 10 of Law 2327/1995). The general minimum age for admission to employment is 15 years (article 2 of Law 1837/89). Finally, the legal age of consent for sexual activity is 15 years old.

- *The child in the Greek legislation on torture*

On March 1993, Greece ratified<sup>198</sup> the Convention on the Rights of the Child (CRC), article 19 of which provides that children be protected from “all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child”. Article 37 (a) CRC furthermore prohibits acts of torture against children and article 40 CRC protects children in conflict with the law. As an international convention, the CRC is “an integral part of domestic Greek law and [...] prevail[s] over any contrary provision of the law” (article 28.1 of the Greek Constitution).

The Greek Constitution (article 7 (2)) and the Criminal Code (article 137 A) both prohibit torture perpetrated by a state agent and punish it but not specifically when it is perpetrated towards a child.

In the Greek legislation, there is no special provision that deals with sexual contact with a minor, involving the use of violence. Nevertheless, the Criminal Code prohibits some sexual offences when perpetrated against children. The rape (article 336 CC) can be applied but its scope is large, as it refers to adults and minors of both sexes. While a legislative framework does exist, general issues prevailing in Greek society (e.g. societal indifference to children that are / could be potentially sexually exploited ) render the provisions of limited value.

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<sup>196</sup> Under Arts 127-128, only adults (i.e. persons after their 18<sup>th</sup> birthday) have full legal capacity. Nevertheless, it should be noted that the GCC provides children aged ten and above with a limited legal capacity.

<sup>197</sup> Before its amendment, Art 121 CC provided that minors are those aged between seven and seventeen years old.

<sup>198</sup> By virtue of Law 2102/1992.



## 1. Children's rights and police

### 1.1. Police duties towards arrested children

A potential field of children's rights abuse relates to their treatment when confronted by the police. It should be noted that the Hellenic Police considers the protection of minors as an important priority. Thus, according to Art 97.1 of Presidential Decree 141/1991, the Hellenic Police has the duty to protect minors from any kind of moral, physical or psychological danger.

Under this article, the Hellenic Police has to notify the competent authorities such as juvenile probation officers, of any anti social behaviour evinced by minors. It can also carry out investigations in order to ascertain whether a minor is being abused or neglected. Its duties include the arrest and bringing before the prosecutor of those minors arrested for begging or committing other offences. Furthermore, police officers should treat minors caringly and with affability, avoiding any action that can humiliate them and create to them bad feelings against the police.

Moreover, under article 97.2 of Presidential Decree 141/1991, police officers should reprimand a minor arrested for committing a petty offence that does not evince an "anti social attitude", instead of pressing charges against him/her. Under the same article, police officers can also issue warnings to parents to exercise better supervision of their child.

Should the police arrest and detain a minor, then the latter should be detained in special detentions cells. Minors should not be handcuffed, unless they are dangerous and/or are suspected of fleeing.<sup>199</sup>

Furthermore, the Hellenic Police set up in 1987 a special Juvenile division, consisting of two departments: the first deals with criminality among minors against other minors, while the second department deals with minors' criminality.<sup>200</sup> According to the Greek report to the CRC, minors are usually arrested by trained officers of the juvenile police, while the police officers escorting them are in plain clothes and use unmarked vehicles in order not to stigmatise the minors.<sup>201</sup> Unfortunately however, NGO monitoring would suggest that it is only in some cases that the above safeguards are upheld. In the majority of cases, minors are arrested by uniformed police officers, are handcuffed and then taken to the prosecutor.

### 1.2. Some cases of police violence against minors

The Greek state appears to have been aware that police officers tended at time to use "strong arm" tactics while arresting minors. Indeed, the Greek state admitted in its report to the CRC that "*The need for the juvenile division was at least partly connected with the avoidance of maltreatment of minors by police officers during preliminary investigations*".<sup>202</sup> Nevertheless, the increasing number of allegations of police brutality against minors shows that this aim has not yet been met and police officers continue to enjoy impunity.

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<sup>199</sup> Art 97.1.0, Presidential Decree 141/1991

<sup>200</sup> See Initial Report under the Convention on the Rights of the Child, CRC/C/28/Add.17, submitted April 14, 2000, p 38 [hereinafter Initial Greek Report to the CRC].

<sup>201</sup> See Initial Greek Report to the CRC, *op.cit.*, p 38, 144.

<sup>202</sup> See Initial Greek Report to the CRC, *op.cit.*, p 38.



Another serious concern is the excessive number of illegal proceedings against often unaccompanied alien minors asylum-seekers including arbitrary arrests and detention with adults, illegal deportation orders and slow procedures for family reunification.

### **1.2.a. The Paraskevas Tranteros and Dimosthenes Argyroudis case<sup>203</sup>**

Two boys, Paraskevas Tranteros, aged 14, and Dimosthenes Argyroudis, aged 13, were arrested on 19 August 1994 and taken to the police station of Kassandria, Halkidiki, in northern Greece, after they were (wrongly) suspected of having stolen money from their employers. They were detained several hours at the police station where they were ill-treated and threatened with sexual abuse.

Three police officers were subsequently accused of having kicked and beaten the two boys in order to make them confess to the theft. The officers denied these charges and said the boys had been beaten by their angry employers. This was also the conclusion of the Sworn Administrative Inquiry (SAI) that was launched into the incident.

On 27 May 1999, the Three-Member Misdemeanours' Court of Halkidiki convicted the three officers of offences against human dignity under Article 137A.3 CC and sentenced them each to four years' imprisonment and five years' deprivation of their civil rights.<sup>204</sup> The police officers appealed their sentences and were set free pending appeal.

At the end of the appeal hearing before the Three-Member Appeals' Court of Thessaloniki in March 2000, the court acquitted the three officers. The court stated that the boys' accounts of their ill-treatment were exaggerated and that their injuries had been inflicted solely by their two employers.<sup>205</sup> However, the court's judgment was not clear since it rejected the three officers' claim not to have been present when the boys were beaten (allegedly by their employers)<sup>206</sup> and also overlooked the fact that it was the duty of the two police officers, as representatives of the state, to protect the two boys from any such assault, and that by failing to intervene they had, by omission, aided and abetted in the assault, in violation of an official's duty.<sup>207</sup>

### **1.2.b. The Refat Tafili case<sup>208</sup>**

Refat Tafili was an undocumented Albanian immigrant aged 16 who came to Greece in December 2000, where with the help of a relative he found work. According to his account, on the evening of 8 February 2001 three plainclothes police officers carried out a raid at a house in the Aghios Stephanos quarter of Athens where he and some other Albanians were staying. They took Refat Tafili outside, pushed him to the ground and began to kick his stomach and legs.

Refat Tafili was then taken to the police station in Aghios Stephanos, Greater Athens, where he was put in a cell. As he became ill, police turned him out onto the street instead of summoning medical aid.

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<sup>203</sup> See Amnesty International and Helsinki Federation for Human Rights (AI/IHF), *Greece: In the Shadow of Impunity: Ill-Treatment and the Misuse of Firearms*, 24 September, 2002, AI Index EUR 25/022/2002, p 39, available at [http://www.greekhelsinki.gr/hr/english/countries/greece/ai\\_main\\_nophotos\\_24\\_09\\_02.doc](http://www.greekhelsinki.gr/hr/english/countries/greece/ai_main_nophotos_24_09_02.doc) [hereinafter AI/IHF, *Greece: in the shadow of impunity...*]

<sup>204</sup> Decision no.1263/27.5.99

<sup>205</sup> The two employers were sentenced in 1999 to three months' imprisonment each for injuring the boys; their appeal against their conviction was still pending in early 2002.

<sup>206</sup> Decision no.816/3.3.2000 obtained by GHM.

<sup>207</sup> Under Article 1 of the Convention against Torture, torture includes: "...when such pain or suffering is inflicted by ... or with the consent or acquiescence of a public official or other person acting in an official capacity".

<sup>208</sup> AI/IHF, *Greece: in the shadow of impunity...*, *op. cit.*, p 41.

Early the next morning his relatives took Refat Tafili to the hospital, where he remained for just over a week. While the law requires hospitals to report undocumented foreign nationals to the police,<sup>209</sup> at 8:30 am on 17 February 2001, Refat Tafili was arrested by armed police officers at the hospital and taken to Papagos police station, Greater Athens, to be detained pending deportation. Refat Tafili was next sent to Police Headquarters in Athens, where he filed a complaint against the three officers who had beaten him. He was then transferred to Aghia Paraskevi police station where he identified one of the three officers who had beaten him on the night of 8 February. Criminal proceedings were launched against the officer and other unidentified police officers. A Sworn Administrative Inquiry was also launched.

Waiting for his deportation, although he was still weak and in pain, he was detained in very bad conditions, particularly together with five adult immigrants.

On 22 February 2001, Refat Tafili was ordered to leave the country within 15 days, contrary to medical recommendations. However, shortly before his release his health seriously deteriorated. He was taken in handcuffs to the Hospital, where he remained until 5 March.

On 26 February 2001 his lawyer filed an appeal against his deportation. Following the intervention of the Ombudsman, Refat Tafili was subsequently granted permission, on exceptional grounds, to remain in Greece for a further six months. This permission has since been extended.

However, by the end of the year the administrative inquiry had reportedly concluded that two police officers had committed serious breaches of discipline, and referred them to a Disciplinary Board with the recommendation that one be permanently dismissed and the other suspended from service.<sup>210</sup> According to an unconfirmed press report, this recommendation has been set aside on review and instead it has been recommended that they be exonerated.<sup>211</sup> Moreover, one police officer has been reportedly indicted for causing serious bodily harm.

### **1.2.c. The Bekos / Koutropoulos case<sup>212</sup>**

At about 1am on the morning of 8 May 1998 two young Roma, Lazaros Bekos, aged 17, and his friend Eleftherios Koutropoulos, aged 18, were arrested in Mesolonghi. They were attempting to break into a kiosk, when plainclothes police officers arrived and hit Lazaros Bekos on the back of the head with a gun. One of them pushed him to the ground and stamped on him.

The two youths were taken to Mesolonghi police station where they were held until the following day and separately interrogated. They alleged that they were beaten and threatened with sexual abuse to make them confess to other offences or to provide information about suspected drug-dealers. They were also subjected to obscene racial abuse.

The two youths alleged that they were refused permission to call their parents until the afternoon of 8 May 1998.<sup>213</sup> Moreover, no lawyer was present during their interrogation by police officers.

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<sup>209</sup> The Greek Personal Data Protection Authority has stated that this provision (Article 54 (2) of Law 2910/2001) directly contravenes the principle of non-discrimination and should consequently be amended (Opinion 86/2001 of 19 June 2001). This provision (i.e. that hospitals have to warn police of any undocumented migrants) has now been repealed.

<sup>210</sup> Ombudsman, *Annual Report 2001*, pp. 95-96.

<sup>211</sup> Article in Athens based daily newspaper *Eleftherotypia*, 28 June 2002

<sup>212</sup> AI/IHF, *Greece: in the shadow of impunity...*, *op. cit.*, p 9.

<sup>213</sup> From an interview on 9 May 1998 with GHM/MRG-G and statements made in court on 8 October 2001.

On the morning of 9 May, when the two youths were brought before a local public prosecutor to be charged, they did not complain to the prosecutor about their ill-treatment because they had been warned by police “not to say anything or they would send us to prison in Ioannina”.

The allegations made by Lazaros Bekos and Eleftherios Koutropoulos were publicized by GHM/MRG-G on 11 May 1998. An internal police inquiry was completed one year later, on 18 May 1999. The police major general in charge of the inquiry concluded that two police officers (Commander Apostolos Tsikrikas and Deputy Commander Andreas Avgheris) had “*behaved with exceptional brutality*” and recommended that they should be punished with temporary suspension from service.

However, Apostolos Tsikrikas was only fined and demoted. No disciplinary measures were finally taken against the second officer. The subordinates allegedly responsible for beating the two Roma were not identified in the above order, nor did the police authorities make any subsequent attempt to investigate and establish their identity.

Additionally, on 8 October 2001 Apostolos Tsikrikas was tried on charges under Article 137A (3) of the Criminal Code (less serious cases of torture). The Appeals’ Court of Patras acquitted him, concluding that “*however, even if certain of the bruises were inflicted by police officers during their detention in custody it has not been proved that the defendant ... participated in this in any way.*”<sup>214</sup>

#### **1.2.d. The “Piccadilly” case**

In the early hours of March 18, 2004, at around 00:30, plainclothes police officers, with weapons drawn, carried out a raid in the “Piccadilly” bar in Athens. They then proceeded to arrest twenty people, one of them seventeen years old M.M., an Albanian immigrant in Greece. When the police officers asked M.M. how old he was, he answered that he was twenty years old.

The persons arrested were handcuffed and taken to the General Police Directorate of Athens. There, they were taken to the Juveniles Department. All twenty persons (including M.M.) were allegedly subjected to verbal abuse concerning their sexual orientation (“Piccadilly” was a known gay bar). M.M. was not allowed to call his parents. M.M. made a first deposition, as a witness, at 4:30 am. Actually, according to the deposition, there was evidence that M.M. was supposed to be involved in illegal acts and hence he was now officially an accused. The police officers refused to read out the deposition to him as he requested since he does not know to read Greek. Instead they slapped him, asking him to sign the deposition. He was also not informed on his rights, particularly his right to a legal counsel.

M.M. alleged that he was slapped several times because of his refusal to testify that the owners of “Piccadilly” were prostituting him as the police officers asked him. Even though the police was aware that M.M. was a minor and that he was officially considered as a defendant, he was not brought before a Juveniles’ Prosecutor. Rather, in the evening of March 18, 2004, he was taken to the “ordinary” prosecutor who did not refer M.M. to the juveniles’ prosecutor but proceeded to indict him as an adult, in violation of the criminal procedure specific to juveniles.

## **2. Juvenile justice system**

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<sup>214</sup> Decision of the Three-Member Appeals Court of Patras, No 1898/2001. (Offences committed by police officers of a certain rank and upwards are at first instance tried before appeals courts).

## 2.1. Description of the juvenile justice system in Greece

The criminal provisions concerning minors are to be found in Chapter 8 of the Criminal Code (CC), articles 121-133. These articles underwent a drastic change in 2003, by virtue of Law 3189/2003. Thus, article 121 of the CC was amended and now defines delinquent minors as persons who commit a criminal offence while being eight to eighteen years (completed) old.<sup>215</sup>

Minors between 8 and 13, are not held responsible for the criminal acts which they commit, and only reformatory and therapeutic measures may be applied to them. Minors between 13 and 18, who commit criminal acts are subjected to reformatory or therapeutical measures or penal correction or to reduced terms of imprisonment if the case comes to trial after the adolescent has reached the age of 18.

Should a minor commit a serious felony, he may be imprisoned for up to 20 years. Indeed, penal correction of adolescents in a reformatory institution may be of a minimum duration of 5 years and a maximum of 20 years, if for the criminal act committed by them the law provides for a sentence of more than 10 years. In all other cases the minimum duration of the sentence is 6 months and the maximum 10 years.<sup>216</sup>

### 2.1.a. Administration of juvenile justice

The procedure following the arrest of a minor should be the following: the minor is brought before the misdemeanours prosecutor. If the minor was arrested in Athens, Piraeus, Thessaloniki or Patras, then he will be taken to a misdemeanours prosecutor, who has been specifically appointed for dealing with offences committed by minors –in all other areas of Greece, the minor will be taken to the misdemeanours prosecutor on duty.<sup>217</sup> The prosecutor can then either proceed to launch criminal proceedings against the minor or, in cases where the minor has committed a petty offence or a misdemeanour, the prosecutor can abstain from indicting the minor, if s/he thinks that under the circumstances the offence took place and because of the minor's personality it is not likely that s/he will commit the same offence again.<sup>218</sup> Otherwise, the misdemeanours prosecutor can impose any of the "reformatory measures" laid down in Art 122.1 CC and / or a fine (up to 1,000 euros, to be paid to a not-profitable organization or a charity) and set a deadline by which the minor should comply with the measures imposed.<sup>219</sup> If the minor complies with the measures imposed upon him, then the misdemeanours prosecutor can shelve the complaint against the minor; if the latter fails to do so, then the prosecutor has to launch criminal proceedings against him / her.<sup>220</sup>

If the minor has committed a felony, or if the misdemeanours prosecutor decides to indict him, then, under the provisions of article 239.2 of the Code of Criminal Procedure (CCP), the misdemeanours prosecutor should order an official (who can be a juvenile probation officer) to conduct a special investigation into the hygienic, moral and educational aspect of the minor's life.

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<sup>215</sup> Before its amendment, Art 121 CC provided that minors are those aged between seven and seventeen years old.

<sup>216</sup> Art 54 CC., as amended

<sup>217</sup> Art 27.1 CCP, as amended.

<sup>218</sup> Art 45A.1 CCP.

<sup>219</sup> The prosecutor however cannot order these measures in relation to minors of less than thirteenth years of age (Art 113.1.A CCP). Moreover, the prosecutor cannot decide the placement of a minor in a correctional institution (Art 45.A.2)

<sup>220</sup> Art 45A.2 CCP.

If the minor between 13 and 18 has allegedly committed a felony punishable by more than ten years imprisonment, then the misdemeanours prosecutor might, if there are “justified fears” that the minor will flee the country and / or commit further crimes, decide to remand the minor to custody, in a juvenile correctional institution, pending trial.<sup>221</sup> Alternatively, in all other cases of felonies or of misdemeanours punishable by a sentence of at least three months’ imprisonment, the misdemeanours prosecutor can impose either restrictive conditions upon the minor, such as the obligation to present him/herself to the local police station at regular intervals.<sup>222</sup>

Criminal charges against minors are tried before One Member or Three Member Juvenile Courts. The former essentially try all offences committed by minors, with the exception of those offences that carry a confinement term of more than five years; these are tried by the Three Member Juvenile Court.<sup>223</sup> A right of appeal before a Juvenile Appeals Court exists only against the judgements of juvenile courts sentencing a minor to a confinement term or to prison terms of more than two months (prison terms can be imposed by juvenile courts to minors who stand trial after their eighteenth birthday for offences they committed while they were minors).<sup>224</sup>

Finally, it should be noted that under certain circumstances, a minor may stand trial before an “ordinary” criminal court. Thus, if the minor has completed his fifteenth birthday and has been indicted for being an accessory to an offence committed by adults, then the prosecutor or the judicial council might decide that, in the interest of justice, s/he should be tried by the same court that will try his/her adult accomplices. In that case, care should be taken that the special juvenile judge should also sit in the panel of judges, although this is not mandatory. If however the minor had not reached his fifteenth birthday at the time the offence was committed, then the prosecutor is obliged to refer the minor to a juvenile court. In all other cases, the prosecutor’s / judicial council’s decision as to whether the minor should be tried by a juvenile court or not is discretionary.<sup>225</sup>

### **2.1.b. Measures towards juvenile offenders**

Articles 122-125 CC set out the measures that can be taken in relation to juvenile offenders. There are three kinds of measures that can be ordered.

- Firstly, a juvenile court or a misdemeanours prosecutor can order measures of “reformatory” character (e.g. reprimanding the minor, assigning the minor’s custody to a Juvenile Protection Society or to a Juvenile Probation Officer, obliging him to provide community service, placement in an appropriate institution etc).<sup>226</sup>
- If the minor faces problems that require special treatment (e.g. he is an alcoholic, addicted to drugs or faces psychological problems), the court can, following a special report to be drawn by experts, impose “therapeutic measures”.<sup>227</sup> These include the assignment of the minor’s

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<sup>221</sup> Art 282.3 and 5, CCP.

<sup>222</sup> Art 282.2 CCP.

<sup>223</sup> Art 113 of the CCP.

<sup>224</sup> Art 489.1.d and e, CCP.

<sup>225</sup> Art 130.3 CCP. It is noted however that under Art 18.4 of Law 1729/1987 on drugs, minors who are involved as accessories or accomplices in drug related offences committed by adults should always be referred to juvenile courts.

<sup>226</sup> Under Art 45A.2, the prosecutor can impose the same “reformatory” measures as the juvenile court, with the exception of committing the minor to an appropriate correctional institution, for which a court order is needed. Moreover, if the minor has not yet completed his thirteenth birthday, then only the court and not the prosecutor can order “reformatory measures” (Art 113.1.A CCP).

<sup>227</sup> Art 123 CC.

custody to a Juvenile Protection Society<sup>228</sup> or to a Juvenile Probation Officer serving at the local Juvenile Probation Service but can also include the attendance of special programs by the minor and / or the minor's placement to a therapeutic institution.

- Finally, the juvenile court can impose a confinement term,<sup>229</sup> to be served in a juvenile correctional institution.<sup>230</sup> This confinement term might range from six months to ten years, although if the minor has committed a felony punishable by more than ten years imprisonment, his confinement to a juvenile correctional institution might last from five to twenty years (article 54 CC, as amended). If the minor is brought before the court after he has attained adulthood (i.e. 18 years of age), then the Juvenile court can also impose a reduced prison sentence, to be served in a mainstream prison facility.<sup>231</sup>

- Under article 51 CC, the measures that may deprive a child fully or partly of his/her freedom are the following: imprisonment (in cases of felonies, misdemeanours or petty offences – there are different terms for each), confinement to a special juvenile detention centre to a psychiatric institution. Moreover, according to article 122 CC concerning reformatory measures, a minor may be kept in a state/private/municipal/community correctional facility and article 123 CC concerning therapeutic measures, a minor can *inter alia* be kept in a therapeutic institution.

The number of juvenile offenders who are tried and convicted to the juvenile detention centers is relatively low. Most of the times, courts impose reformatory measures instead of confinement.<sup>232</sup>

## 2.2. Deficiencies of the Greek juvenile justice system

The recently revised Greek legal framework concerning juvenile justice appears on paper to be satisfactory. Unfortunately however, it too faces severe problems of implementation.

### 2.2.a. Situations where the parents/custodians have “encouraged” the minor to commit the offence

Juvenile criminality is inherently connected with the issue of family violence / neglect: it should not be forgotten that minors who commit offences often do so with the “encouragement” of their parents / custodians, an “encouragement” that might include physical or mental abuse. Faced with this problem, the competent authorities should ideally first examine the situation prevailing at the minor's home and secondly apply all necessary measures that, as it has been seen, can include the *ex officio* criminal indictment of the parents/custodians as well as the taking of special measures vis-à-vis the minor.

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<sup>228</sup> These societies are not to be confused with the Juveniles Probation Service, to which the Juvenile Probation officers are seconded.

<sup>229</sup> The term in Greek is “περιορισμός”, i.e. confinement. Throughout the text, the term “confinement term” will be used to differentiate it from the ordinary “prison term”. The former is essentially a prison sentence but is served in special correctional institutions, where minors can complete their primary education and even continue to secondary education, attend creative workshops etc. See Greek Government's Reply to Observations of the UN Committee for the Rights of the Child, *in Implementation of the CRC, Additional and Updated Information Submitted by Greece in Connection with the Consideration of its Initial Report CRC/C/28/Add 17*, (hereinafter Greece's Reply to CRC) available at: [http://www.greekhelsinki.gr/bhr/english/organizations/crc\\_grreplies.doc](http://www.greekhelsinki.gr/bhr/english/organizations/crc_grreplies.doc) , pp 62-63.

<sup>230</sup> It should be noted in this respect that, under Art 130 GCC, if the minor committed the criminal offence following his thirteenth birthday but was brought before the court following his eighteenth birthday then the court might sentence him/her to a prison sentence to be served in a prison for adults. Under Art 130.3 CC, these juveniles should “*as a general rule*” be detained separately from the other adult prisoners.

<sup>231</sup> Art 130 CC.

<sup>232</sup> NGOs' report in application of the UN CRC – Greece, May 2001, p.28.

It nevertheless appears that this rarely happens and that, as a rule, the minor is usually “reprimanded” and then taken back to his/her parents/custodian, who are asked to supervise him better.

It is interesting to note that a total of 21,396 minors were brought before juvenile courts, in thirty three cities (including the major urban centres of Athens, Thessaloniki, Piraeus) during the years 1997 to 2000.<sup>233</sup> In 8,539 cases of minor offenders the juvenile courts merely administered a “reprimand”, while in another 8,078 cases the juvenile courts placed the minor under supervision from his parents/custodians. In other words, 16,617 minors were essentially handed over to their parents/custodians who might well be the ones that physically abuse them or exert psychological pressure and force them to commit offences.<sup>234</sup> In only 2,733 cases was the supervision of the minor entrusted to a probation officer.<sup>235</sup> This trend continues unabated. According to recently released figures from the Juvenile Protection Service of Athens, during the judicial year of 2003 (i.e. from September 2002 to June 2003), 1,700 juvenile minors were found guilty for a variety of offences before the One Member and Three Member Juveniles Courts of Athens, of whom 1,516 were boys. In relation to 1,100 minors, the Courts simply entrusted their supervision to their parents while in another 236 cases the minors were merely reprimanded. There were only 200 cases of minors the custody of which was entrusted to juvenile probation officers, while 139 and 46 minors were sentenced to prison and confinement terms, respectively.<sup>236</sup>

### **2.2.b. The lack of juvenile probation officers**

An additional concern pertains to the fact that no information is provided as to how these measures were imposed. It is reminded that under article 239.2 CCP, the misdemeanours prosecutor should order an official, generally a juvenile probation officer, to conduct a special investigation into the hygienic, moral and educational aspect of the minor offender’s life, in order to ascertain whether this had any impact on him/her committing the offence. Nevertheless, considering that for example there are only about twenty juvenile probation officers serving in the juvenile courts of Athens and Piraeus which try more than 4,500 minor offenders per year,<sup>237</sup> it is difficult to see how these probation officers can conduct an in-depth and exhaustive investigation into each minor’s family life. Indeed, in 2001, the Minister of Justice Michalis Stathopoulos, in his answer to a parliamentary question tabled by Member of Parliament Fotis Kouvelis, stated that “*juvenile probation services are in a very difficult situation because of the complete lack of juvenile probation officers at the Juvenile Institution in Volos (Idrima Agogis Volou) and the constantly diminishing staff, due to retirement, at these juvenile probation services.*”<sup>238</sup> According to Greece’s Reply to the CRC, in 2002 there were only ninety three juvenile probation officers serving in the fifty two Juvenile Probation Services of Greece.<sup>239</sup> As a result of this staff shortage, one juvenile probation officer has to deal with over 600 cases a year in Athens, while 14 Juveniles Courts in other parts of Greece did not have any juvenile

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<sup>233</sup> In total, there are sixty three juvenile courts operating in Greece.

<sup>234</sup> This is for example the case with many parents of Romani ethnic origin who, due to economic hardship, often force their children to beg in the streets or clean car windshields etc of cars stopped at traffic lights (for the issue of “street children” see sections 2.3. and 5.2.).

<sup>235</sup> See Greece’s Reply to the CRC, *op. cit.*, set of tables in pp 34-46. Indeed, as the Greek state admits, in p 46, the “non-custodial measure of “placing a child under the supervision of his/her parents” or “reprimand” prevail in all tables.”

<sup>236</sup> Article in Athens based daily newspaper *Eleftherotypia*, issue of July 22, 2004, entitled “Juvenile Delinquency: Courts give a second chance”, available in Greek at [http://www.enet.gr/online/online\\_p1\\_text.jsp?dt=22/07/2004&c=112&id=24694644](http://www.enet.gr/online/online_p1_text.jsp?dt=22/07/2004&c=112&id=24694644)

<sup>237</sup> See interview of George Moschos, Deputy Ombudsman for Children’s Rights, dated March 2, 2004, available in Greek at <http://health.in.gr/news/article.asp?lngArticleID=49255>

<sup>238</sup> See Greek Helsinki Monitor, “Addendum to report to UN on CAT,” with pertinent excerpts from *Avghi* daily newspaper, May 1, 2001 articles by Vangelis Venizelos, available at [http://www.greekhelsinki.gr/bhr/english/organizations/ghm\\_cat\\_add.doc](http://www.greekhelsinki.gr/bhr/english/organizations/ghm_cat_add.doc)

<sup>239</sup> See Greece’s Reply to the CRC, *op.cit.*, p 63.

probation officer at all.<sup>240</sup> According to data concerning the judicial year 2003 (September 2002 – October 2003), provided by the head of the Juvenile Probation Service of Athens, Ms Eleni Tsagareli, this Service had under its supervision only 174 minors.<sup>241</sup> It is submitted that the paucity of the available probation officers, coupled with the existence of a limited number of special institutions for juveniles,<sup>242</sup> often leads the court to impose lenient measures on minor offenders, without adequately exploring the reasons behind their criminal behaviour and without reaching a decision that would be in the best interests of the minor. Indeed, as the head of the Juvenile Probation Service of Athens, Mrs Eleni Tsagareli stated, entrusting the supervision of a minor to a juvenile probation officer has been proven to constitute the most effective “reformatory” measure.<sup>243</sup> Unfortunately, as it has been seen, the chronic shortage of juvenile probation officers means that few minors enjoy their expert support and assistance.

### **2.2.c. Pre-trial detention**

Another problem that has been noted concerns the remand into custody of minors pending trial; while according to the Greek state's initial Report to the CRC, “every effort is made to ensure that the case is heard as soon as possible and, in all circumstances, no more than six months after the date of perpetration of the crime”,<sup>244</sup> this is not always the case.

Thus, according to a 2000 Report submitted by the Director of the Juvenile Detention Center of Avlona, 120 out of the 287 juvenile detainees had been remanded to detention pending trial. 29 of them were facing charges for theft, whereas such charges do not warrant remanding into custody (which is only in charges of felonies, article 282.2 of the CCP).<sup>245</sup> Moreover, as of April 2004, there were 121 (out of 283) minors detained in Avlona pending trial.<sup>246</sup>

A collateral issue that has arisen concerns the extended duration of the remand into custody. Thus, according to data provided subsequently by the Greek state, out of the nine minors being in pre trial detentions in the Special Juveniles Institution of Volos in 2000, seven were detained for more than six months, while one of those seven minors was detained for more than eighteen months. In 1999, a minor had been detained for more than twenty four months pending his trial.<sup>247</sup> Excessive pre-trial and pending-trial detention of the minor is likely to affect his rights, since if a minor is tried after his eighteenth birthday, then the court might decide to impose a reduced prison sentence upon him/her, to be served at mainstream prison facilities.<sup>248</sup>

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<sup>240</sup> See article in *Avghi*, Athens based daily newspaper, issue of May 1, 2001, *op.cit.*

<sup>241</sup> See article in Athens based daily newspaper *Kathimerini*, issue of July 22, 2004, entitled “Juvenile delinquency), available in Greek at [http://www.kathimerini.gr/4dcgi/w\\_articles\\_ell\\_1405907\\_22/07/2004\\_110224](http://www.kathimerini.gr/4dcgi/w_articles_ell_1405907_22/07/2004_110224)

<sup>242</sup> It is noted that there are no correctional institutions for minors in Athens, with the exception of a special section in the Women's Prison of Korydallos, where female juvenile delinquents are detained.

<sup>243</sup> See article in Athens based daily newspaper *Kathimerini*, issue of July 22, 2004, entitled “Juvenile delinquency), *op.cit.*

<sup>244</sup> Greek Initial Report to the CRC, *op.cit.*, p 146.

<sup>245</sup> Info derived from *Non-governmental Organisations' Report in application of the United Nations Convention on the Rights of the Child*, undated, submitted to CRC in June 2001 by a coalition of 10 Greek NGOs (ARSIS, Family and Child Care Centre, Greek Council for Refugees, Institute of Child Health, International Social Service, Marangopoulos Foundation for Human Rights, Save the Children, Support Centre for Children and Family, Smile of the Child, Therapy Centre for Dependent Individuals), whose efforts were coordinated by Amnesty International Greece, p 28. (hereinafter NGO Report).

<sup>246</sup> See Press Release (in Greek) from Ministry of Justice, dated April 7 2004, available at <http://www.ministryofjustice.gr/modules.php?op=modload&name=News&file=article&sid=207&mode=thread&order=0&thold=0>

<sup>247</sup> See Greece's Reply to the CRC, *op.cit.*, p 52. It is noted that under the CCP, pre trial detention cannot last more than six months, unless the competent judicial council authorizes the extension of the detention for up to another six months. After these additional six months lapse, then the remanded persons should be released unless there are special circumstances and the competent judicial council authorizes the extension of the pre trial detention for another six months, i.e. for a total of eighteen months (Art 287 CCP). Following the expiration of eighteen months in remand, the remanded person has to be released.

<sup>248</sup> Art 130.1 CCP. According to Art 130.3, CCP, such prisoners are “generally” detained separately from the adult detainees.



### **2.2.d. The juvenile detention centres: preparatory schools for criminals?**

Criminological studies have questioned the reformatory efficiency of juvenile detention centres, calling them “*preparatory schools for criminals*” or “*universities for criminals*” as 96.7% of all serious offenders in Greek prisons today have had previously been incarcerated in juvenile institutions, where “*they enter as trainees and transform themselves into doctors of crime*”<sup>249</sup> It should be noted that, when Minister of Justice Anastasios Papaligouras visited the Avlona Juvenile Detention Center on April 2004, he noted that the infrastructure in relation to the educational needs of the juveniles was inadequate, while he also noted that not enough social workers and no psychologists were working there.<sup>250</sup>

## **3. State institutions**

### **3.1. Corporal punishment in schools**

According to Presidential Decree 201/1998 (article 13.8c), applying to primary schools, “*Corporal punishment is not allowed*”. Thus, corporal punishment in primary schools is explicitly prohibited.

Presidential Decree 104/1979, applying to secondary schools, lists the approved sanctions in article 27 but corporal punishment is not among them. There is no explicit prohibition of all forms of degrading punishment or treatment of children in secondary schools. This “implicit” abolition of corporal punishment seems to be inadequate and illogical, given the explicit prohibition in primary schools.

### **3.2. Corporal punishment in state institutions and forms of care**

#### **3.2.a. Legal framework**

The Ministry of Health and Welfare by means of services and welfare institutions it supervises, provides with care children that are victims of abuse, unprotected children or children without family care (for example street children). So, by order of the public prosecutor, and after all necessary measures have been taken, it takes the abused children away from their environment and places them – as well as unprotected children and children without family care – into social care units (Child Welfare Centers and Child Cities). According to their rules of operation, any type of violence against and abuse of children is prohibited in these units. Children of this category can be placed in institutions run by the church and in welfare institutions.

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<sup>249</sup> Team research and statements by Panteion University Professor Antonis Manganas and Assistant Professor of Criminology Vaso Artinopoulou and Athens University Professor of Criminology Nestoras Kourakis. See Athina Karali «Πανεπιστήμια κακοποιών τα σωφρονιστήρια» *Kathimerini* 19 August 2001, available in Greek at [http://www.kathimerini.gr/4dcgi/\\_w\\_articles\\_ell\\_1335919\\_19/08/2001\\_5001325](http://www.kathimerini.gr/4dcgi/_w_articles_ell_1335919_19/08/2001_5001325) and Dimitris Nanouris «Φρονιστήρια για εγκληματίες» (Preparatory schools for criminals) *Eleftherotypia* 19 August 2001, available in Greek at [http://www.enet.gr/online/online\\_text?dt=19/08/2001&c=112&id=99443148](http://www.enet.gr/online/online_text?dt=19/08/2001&c=112&id=99443148)

<sup>250</sup> See press release (in Greek) from the Ministry of Justice, dated May 4, 2004, available at <http://www.ministryofjustice.gr/modules.php?op=modload&name=News&file=article&sid=207&mode=thread&order=0&thol%20%20d=0>

Reviewing all of the legislation referred to the above institutions, there are two Ministerial Decisions which explicitly prohibit corporal punishment from state residential institutions for children and from municipal day care institutions and nursery schools.<sup>251</sup>

There is no explicit prohibition of corporal punishment in other institutions and forms of care (summer camps, adoption, fostering, social care centres, “Child Cities of the National Welfare Organisation”, “institutions of Ecclesiastical and private initiative”, child and infant nurseries run by charities) but the Criminal Code applies.

### **3.2.b. Practice**

- *“Closed child care institutions do not have children councils to involve them in matters of direct concern to them and the promotion of their rights.*
- *In many state child care institutions for children between 6-18 years of age, children lack individual clothing. Clothes are given daily to the children by the staff, to end up in mass laundry and classification by size, in a storage room for clothes. The explanation offered that this is done to avoid losing clothes or to help better ‘organize’ the institution is indicative of the insufficient investment by the system in fundamental children’s rights as compared to the rights of the system or of those that represent it.*
- *For the choice and protection of the child in an environment outside the family, the child’s opinion is rarely sought. The decision of whether a child should be placed into a state institution, foster care or remain at home, usually under conditions, is made by professionals, without the input of the child, and often without even the input of the family. This choice is a characteristic example of the treatment of the child as an object of protection, rather than a subject of rights.”<sup>252</sup>*

When a child is also disabled, and in view of the widespread intolerance of Greek society towards disabled persons, perceived as a burden if not a curse, its rights are even less respected. George Stergioulas, an officer of the Panhellenic Federation of Parents and Guardians of Disabled Persons, reported in July 2001, that, in the summer camp he was in charge of:

*“On 9 July arrived to the camp of Welfare [Agency] in Stavros of Thessaloniki 30 individuals from the institution of ‘Saint Nektarios’ in Sidirokastro: their heads where close-cropped to the extent that their sex was unrecognizable, they were wearing striped uniforms and their dental care was shabby. They were bound in rounds and were pacing around their tents, while some had an obvious aggressiveness. Besides, they were accompanied by 20 persons, most of whom lacking the necessary experience, while there were not enough wheelchairs.”<sup>253</sup>*

### **3.2.c. The “Agia Varvara” children’s institution**

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<sup>251</sup> Ministerial Decision Γ2β/OK/8291, issued in 1984, on “Regulation of operation of state residential institutions for children” (article 23, par. 2); and Ministerial Decision Π2β, issued in 1997, “Standard regulation of operation of municipal day care institutions and nursery schools” (article 14).

<sup>252</sup> E. Agathanos-Georgopoulou and Maria Tsangari, *Εγχειρίδιο για τα δικαιώματα του παιδιού*, (Guide to the Rights of the Child), Institute of Children’s Health, Athens, 1999, p. 57.

<sup>253</sup> *Eleftherotypia*, 25 July 2001, [http://www.enet.gr/online/online\\_p1\\_text.jsp?dt=25/07/2001&c=112&id=39708](http://www.enet.gr/online/online_p1_text.jsp?dt=25/07/2001&c=112&id=39708)

On December 1998, the Deputy Minister of Health and Welfare Theodore Kotsonis, set up a program concerning the protection and social welfare for street children.<sup>254</sup> The program essentially consisted of the temporary accommodation of street children in childcare facilities of the Ministry of Health and Welfare in Athens. One of these two facilities was the children's institution "Agia Varvara" ("Saint Barbara"). This institution which would provide shelter to street children was in fact a special boarding institution for orphan girls. It is interesting to see that, according to the ministerial decision, no special funds were allocated for the program.

According to a report by the Swiss NGO "Fondation Terre des Hommes", 487 out of the 644 street children that had been accommodated in the "Agia Varvara" institution between November 1998 and October 2001, had disappeared.<sup>255</sup> Despite the gravity of these allegations that were made public, neither the Ministry of Health and Welfare's authorities nor the Misdemeanours Prosecutor's Office (which are the competent authorities to run the program in question) undertook any investigation in order to ascertain how and under which conditions the children had disappeared and possibly launch proceedings.<sup>256</sup> On request of the Albanian Ombudsman<sup>257</sup>, the Greek Ombudsman's Office launched a fact finding investigation which led to the publication, in March 2004, of a Findings Report.<sup>258</sup>

In the Findings Report, the Ombudsman observed numerous deficiencies concerning both the program and the way it was implemented. Actually, it was not a program in the strict sense of the word, as it consisted merely of the assignment of children into already existing institutions. Moreover, there was a lack of funds<sup>259</sup> to finance adequate projects concerning the recreation and education of the children. Furthermore, the institution was understaffed and this became a real problem when the police started transferring immediately, upon arrest, all street children to the institution (until then street children were detained in police stations). Moreover, initially only children up to twelve years of age were to be sent to the "Agia Varvara" institution, but in the absence of any institution for children aged 12-17, all children up to 17 were sent to "Agia Varvara". This led to the lack of available rooms and space in general. Perhaps even more importantly, the absence of police officers to guard the institution, coupled with the lack of institution's guards meant that the children could escape from the institution easily.<sup>260</sup>

As a result of the above shortcomings, 502 out of the 661<sup>261</sup> children accommodated in the "Agia Varvara" institution during 1998-2002 were officially mentioned as "missing".<sup>262</sup> The number of disappeared children might in fact be even higher, as according to the Ombudsman's Report, 22 children were taken by the Hellenic Police which undertook to take them to the Albanian-Greek border.

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<sup>254</sup> See Decision by the Deputy Minister of Health and Welfare Theodore Kotsonis, Ref. No. Γ2δ/οίκ. 4338, dated December 7, 1998.

<sup>255</sup> See Terre des Hommes report (in Greek), *Children Trafficking from Albania to Greece*, January 2003, p 27.

<sup>256</sup> GHM, which was one of the Greek NGOs that provided assistance to Terre des Hommes for their report, is in possession of a document from the Ministry of Health and Welfare, dated October 16, 2001, in which the disappearance of the 487 children is acknowledged. It appears however that no official investigation was launched into the disappearances before GHM lodged a criminal complaint report with the Misdemeanours Prosecutor's Office of Athens.

<sup>257</sup> Letter from the Republic of Albania's People's Advocate to the Greek Ombudsman's Office, Ref. No. 33, dated January 30, 2003, on file with GHM.

<sup>258</sup> Ombudsman's Report on Street Children, *op.cit.*, p 10.

<sup>259</sup> It appears that during the program's implementation, only 1,600,000 drs (approx 4,705 euros) were provided in November 1998. See Ombudsman's Report on Street Children, *op.cit.*, p 9.

<sup>260</sup> Ombudsman's Report on Street Children, *op.cit.*, 16-18.

<sup>261</sup> The small discrepancy between these numbers and the ones mentioned in the Terre des Hommes report is due to the fact that the latter referred to children accommodated in the "Agia Varvara" institution between 1998 and late 2001.

<sup>262</sup> According to the Greek Ombudsman, "The Greek Ombudsman's investigation confirmed that, indeed, a large number of children have escaped from the care institution "Aghia Barbara" (Santa Barbara) ... and are officially "missing" as they have not been relocated by the police or other authorities". See Letter from the Greek Ombudsman's Office to Mr. Ermir Dobjani, People's Advocate of the Republic of Albania, Ref. No. 2202.2/2003, dated May 6, 2004, p 2, on file with GHM.

In its report, the Ombudsman implicitly noted that the disappearance of so many children from a state institution raised concerns about the Greece's conformity with the Convention on the Rights of the Child.

On May 21, 2004, GHM filed a criminal complaint report with the Misdemeanours Prosecutor's Office of Athens. GHM's criminal complaint was directed both against the "Agia Varvara" staff that might have been implicated into the disappearance of the children, as well as against any member of the Hellenic Police that might be responsible for a variety of offences, such as breach of duty. The Misdemeanours Prosecutor ordered soon the Minors Department of the Police Directorate of Athens to launch a preliminary inquiry into the allegations contained in GHM's complaint report. Unfortunately, considering that the complaint is also directed against police officers of that service and bearing in mind the concerns about the impartiality of such investigations when conducted by police officers, the investigation should have been entrusted to a peace judge as is the usual practise. GHM thus addressed a letter to the Director of the Misdemeanours Prosecutor of Athens, Dimitris Papagelopoulos, explaining the reasons why the investigation should be assigned to a peace court magistrate. The request was rejected and the preliminary inquiry was launched by the police agency.

## **4. Specific issues**

### **4.1. Child Trafficking**

#### ***4.1.a. Legislation***

The previous legislative framework concerning issues of trafficking was very inadequate and has been significantly amended in 2002-2003. Certain provisions of the new anti-trafficking legislation address issues of children. Thus, under criminal law, persons found guilty of children trafficking (article 323A.4 CC) and persons found guilty of trafficking children for sexual purposes (article 351.4 CC) are liable for a prison sentence of at least ten years and a fine ranging from fifty thousand to one hundred thousand Euros.

Moreover, under Presidential Decree 233/2003, special provisions are laid down for children victims of trafficking. Thus, under article 2 of the Decree, children victims of trafficking are to be sheltered in appropriate institutions. Under article 7 of the same decree, children victims of trafficking that have no social insurance are entitled to free medical treatment. Moreover, article 6 provides that (children or adults) victims of trafficking younger than twenty three years old are entitled to attend vocational training programs. Finally, article 44.7 of Law 2910/2001 provides that victims of trafficking are entitled to a special residence permit, to be renewed until the pronouncement of a final and irrevocable decision in the case against their traffickers.

#### ***4.1.b. Practice***

Firstly, it is very difficult to obtain reliable data on the number of children which are trafficked or involved in prostitution because of the enormous profits and powerful criminal organizations involved, as well as the social taboo of sexual exploitation. According to a study by Ira Emke-Poulopoulos, young girls aged 12-15 are the preferred 'commodity' of traffickers, and certain prostitution rings procure girls and boys, mostly from Albania, to work in brothels and sex clubs. According to police sources, child prostitution is limited in Greece, but the few cases which are

reported grossly underestimate the number of actual cases.<sup>263</sup> Moreover, there have been reported cases of boys and girls between the ages of 7 and 16 (most of which are probably foreign children) being used in the production of pornographic materials.<sup>264</sup>

In recent years, there has been a dramatic rise in the number of women and children who are trafficked into Greece for the purposes of forced prostitution, mostly from the Balkans and Eastern Europe, through organized criminal networks.

A survey carried out by the Marangopoulos Foundation for Human Rights between September 1995 and March 1997 in Athens, revealed that approximately 3,000 children were involved in prostitution and the forced provision of "sexual services".<sup>265</sup> Moreover, according to the Assistant Professor of Criminology of the Panteion University of Athens, Mr. Gregory Lazos, there are about twenty thousand women working as prostitutes in Greece. Approximately ten percent of them are girls below eighteen years old, while 75% of these underage girls are from Albania.<sup>266</sup> In addition, the NGO Terre des Hommes has gathered information suggesting that criminal networks are engaged into trafficking of children from Greece to other countries in Europe,<sup>267</sup> as well as that many children are sexually exploited in Greece. According to Mr. Lazos, there were 1,600 underage children offering "sexual services" in Greece. Approximately 90% of those children aged 17-19 were girls. The 1,600 figure includes approximately 400 children engaged into the "paedophilic market". 75% of these children came from Albania, while 60% of them were male. The vast majority of these children was aged 14 and below, as older children are not considered "suitable" for the particular "market".<sup>268</sup>

Societal indifference in Greece towards sexual exploitation is another hurdle which must be overcome to stop the trafficking of children. A characteristic example of this is the case of a 13-year-old Albanian girl who was tortured in the apartment of an Albanian pimp. Neighbours had suspicions because they could hear voices and screams, but no one reported the incident for months.<sup>269</sup> Another aspect of societal and state indifference was discerned in relation to the disappearance of more than five hundred children from the state institution where they were sheltered by the state (see the "*Agia Varbara*" case, section 3.2.c., supra)

## 4.2. Street children

Another issue that has arisen concerns the inadequate protection afforded by the state to children that have been separated from their families. Such children are often "employed" by criminal gangs (sometimes with the express consent of their parents) for begging, performing various tasks (e.g. selling handkerchiefs to passers by or cleaning car windows in traffic lights) or even being prostituted. The problem of the "street children" as they gradually became known, reached considerable proportions in the 1990's with the migration of many Albanians, including children, to Greece.

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<sup>263</sup> Ira Emke-Poulopoulos, "Trafficking in Women and Children: Greece, a country of destination and transit," Athens 2001, p. 12.

<sup>264</sup> Ira Emke-Poulopoulos, op. cit., p. 13. See also Christina Damoulianou «Διεθνές κέντρο πορνείας η Ελλάδα» (Greece, an international prostitution center) *Kathimerini* 29 July 2001, available in Greek at: [http://www.kathimerini.gr/4dcgi/\\_w\\_articles\\_ell\\_1336672\\_29/07/2001\\_5004640](http://www.kathimerini.gr/4dcgi/_w_articles_ell_1336672_29/07/2001_5004640)

<sup>265</sup> "NGO Report," p. 26.

<sup>266</sup> See Report (in Greek) by Terre des Hommes foundation, *Child Trafficking from Albania to Greece*, OAK Foundation/Terre des Hommes/UNICEF, January 2003, at p 12.

<sup>267</sup> *Ibid*, p 12.

<sup>268</sup> *Ibid*, p 23.

<sup>269</sup> Ira Emke-Poulopoulos, op. cit., p. 32.

The problem of “street children” however was not unknown to the Greek authorities as “street children” of Romani ethnic origin were a feature of everyday Greek life even before the migration of Albanians to Greece. The belated attempt by the Greek state in 1998 to address the issue of street children is an implicit admission that nothing had been done until then for the Greek “street children” of Romani ethnic origin.

In general, once they have been arrested by police officers, street children are sent to various childcare institutions. Thus, according to Greece’s Additional Reply to the CRC, *“There are two schemes for children begging in the streets. The children are sheltered, fed, clothed and psychologically supported ... In the city of Athens the scheme functions at the premises of a Center for the Protection of the Child named “Saint Barbara”. “Filoxenia” is responsible for the functioning of the scheme in the city of Thessaloniki.*”<sup>270</sup> According to the Greece’s Additional Report to the CESCR, only 37 street children were in proper childcare institutions as of the date of its reply (late 2003): more specifically, 23 street children were accommodated in the “Filoxenia” centre mentioned above while the other were sheltered by an NGO in Athens, following an agreement with the Greek state.<sup>271</sup> Nevertheless, this number is only a fraction of the children that have been arrested in the past (and presumably, at present) for begging. Moreover, the Greek state’s Additional Report to the CESCR contains no information as to the eventual fate of these children, e.g. whether they were repatriated to Albania, were reunited with their families or were sent to other institutions. Recent evidence suggests that the vast majority of these children have “disappeared” from the state institutions and some of them might in fact not be alive any more (see the “Agia Varvara” case, section 3.2.c)

#### *The particular issue of begging children*

Under Greek criminal law, begging is still a ground of arrest even when it is committed by a minor (Art 407 CC) despite the recommendation of the CRC in 2002 to decriminalize begging by children.<sup>272</sup> Clearly however, arresting and detaining children who are begging (“street children”) neither addresses the heart of the problem nor is conducive to the development of the child’s personality.

During its examination by CRC, Greece noted in its 2002 *Reply to List of Issues* that during the years 1998-2000, 1,161 children, aged 7-17, were arrested for begging throughout Greece.<sup>273</sup> Most of the arrests appear to have taken place in Athens. Thus, according to the Minors Department of the Athens Police Directorate, on average 300 children were arrested for begging annually during the years 1993-1998, with 90% of these children being of Albanian national origin.<sup>274</sup> The fact that this number constitutes a severe underestimation of the real extent of the problem of street children in Greece can be ascertained if a 2000 survey by UNICEF is taken into account. The survey that was limited both in scope (it concerned only the Greater Athens area) and duration (it took place from November 17 to November 29, 2000, when the problem of street children was subsiding and many children were already in state institutions), recorded 955 children aged 2-15 years old begging in the streets. Approximately one quarter of them (23,6%) were Greek, of Romani ethnic origin, while approximately another

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<sup>270</sup> Greece’s Reply to the CRC, p 58.

<sup>271</sup> Greece’s Reply to the CESCR, p 42-43. In addition, 20 unaccompanied minors asylum seekers were also sheltered in a state institution in Crete.

<sup>272</sup> Concluding observations of the CRC: Greece, CRC/C/15/Add.170, 2 April 2002, paras. 78-79.

<sup>273</sup> See Greek Government’s Reply to Observations of the UN Committee for the Rights of the Child, in *Implementation of the CRC, Additional and Updated Information Submitted by Greece in Connection with the Consideration of its Initial Report CRC/C/28/Add 17*, (hereinafter Greece’s Reply to CRC) available at: [http://www.greekhelsinki.gr/bhr/english/organizations/crc\\_greplies.doc](http://www.greekhelsinki.gr/bhr/english/organizations/crc_greplies.doc), p 57

<sup>274</sup> See Foundation Terre des Hommes report (in Greek), *Children Trafficking from Albania to Greece*, January 2003, p 9.

quarter (28,1%) were of Albanian national origin.<sup>275</sup> About 530 of the children were male, while about 100 of the children were aged 2-5 years old.<sup>276</sup>

### 4.3. Discrimination against non-Greek origin juvenile offenders

#### 4.3.a. Statistical data

In Greece there has been an increase in juvenile delinquency since 1998. Statistical data particularly reveal the high ratio of Albanian nationals and Roma involved in the Greek juvenile justice system and thus give a clear sign of probable discrimination. Indeed, according to Giorgos Moschos, Deputy Ombudsman of Children's Rights, *"The number of foreign nationals appearing in courts and sentenced for crimes is higher than 40%. However, the overall reported juvenile delinquency rate has not increased as importantly as to justify the percentage of minor immigrants involved in criminality."*<sup>277</sup>

Various data appear to support this contention, namely that non-Greek nationals and non-ethnic Greek minors are disproportionately represented in the juvenile penal system. Thus, according to a 2003 research based on 177 cases handled by the Juveniles Court of Athens,<sup>278</sup> although the 355 defendants consisted of both Greek and non-Greek nationals (53.8% and 46.2%, respectively; 86.1% of the latter were Albanian nationals), 67 out of the 96 minors that were sentenced to a "confinement term" were non-Greek nationals (66 Albanians and 1 German) while only 29 were Greeks. According to other data, 52% of the minors detained in 2002 at the Special Detention Unit for Minor Delinquents in Avlona were reportedly aliens. Among the ones of Greek origin, almost half were Roma.<sup>279</sup> The trend was still the same in April 2004 in the same detention centre: there were 283 minor detainees of whom 165 were foreign nationals.<sup>280</sup>

According to the statistical data released by the Juveniles Court on 21 July 2004, 1,754 minors were brought before the One-Member and the Three-Member Juveniles Courts of Athens in 2003 and 798 of them were non-Greek nationals, 559 of whom were Albanian nationals.<sup>281</sup>

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<sup>275</sup> Again, it is highly likely that most of the Albanian national origin children were also of Romani or Egyptian ethnicity.

<sup>276</sup> The UNICEF Survey is available (in Greek) at <http://www.unicef.gr/reports/alko/street.php> According to the report, the number of street children throughout Greece was estimated at around 5,800.

<sup>277</sup> Health.in.gr web site, *Juvenile delinquency: In the shadow of lost innocence*, 02/03/2004, available in Greek at <http://health.in.gr/news/article.asp?lngArticleID=49255>

<sup>278</sup> The research concerned cases heard by the Juvenile Courts of Athens on March 2002 and August 2003 on cases of 2000, concerning crimes committed by a group of persons. It was supervised by: Nestoras Kourakis, Criminology Professor in the University of Athens, Pari Zagoura, lawyer-criminologist and juveniles probation officer and Ms. A. Galanou, lawyer (postgraduate of Criminal Science, Athens Law School), daily newspaper "To Vima", *The anthropogeography of juvenile delinquency*, 21/12/2003, available in Greek at [http://tovima.dolnet.gr/demo/owa/tobhma.print\\_unique?e=B&f=14047&m=A34&aa=1](http://tovima.dolnet.gr/demo/owa/tobhma.print_unique?e=B&f=14047&m=A34&aa=1)

<sup>279</sup> Daily newspaper "Eleftherotypia", *100% increase in juvenile delinquency*, 22/06/2002, available in Greek at [http://www.enet.gr/online/online\\_text?dt=22/06/2002&c=112&id=20129144](http://www.enet.gr/online/online_text?dt=22/06/2002&c=112&id=20129144)

<sup>280</sup> Ministry of Justice web site, *Minister's visit to the E.K.K.N (Special Detention Unit for Minor Delinquents)*, 07/04/2004 available in Greek at <http://www.ministryofjustice.gr/modules.php?op=modload&name=News&file=article&sid=207&mode=thread&order=0&thold=0>

<sup>281</sup> Daily newspaper "Ta Nea", *In Juvenile Courts, 16-year old boys come first in violating the Traffic Code (K.O.K.)*, 22/07/2004, at [http://ta-nea.dolnet.gr/neaweb/neaweb.print\\_unique?e=A&f=17992&m=N63&aa=2](http://ta-nea.dolnet.gr/neaweb/neaweb.print_unique?e=A&f=17992&m=N63&aa=2)

#### 4.3.b. Cases of discrimination

- **A 23-years prison sentence to a Romani minor<sup>282</sup>**

On 1 October 2002, Z.G. was sentenced to a 23-year prison term, having been found guilty of intentional homicide, aggravated theft and gun possession and use by the Three-Member Juvenile Court of Patras.<sup>283</sup> Z.G. was only 17-year old when he committed the offence and could have therefore been sentenced to a “confinement” term. The fact that he stood trial after his seventeenth birthday meant that it was up to the court’s discretion to sentence him either to a reduced prison term or to a confinement term.<sup>284</sup> Moreover, under article 83 CC, the court should have sentenced Z.G. to a prison term of *at least* ten years; nevertheless, the court proceeded to impose a very high sentence of 23 years.

Moreover, the court did not take into account that it was the victim who allegedly had first attacked Z.G. who, being under the influence of drugs, lapsed in a frenzy. The court also was not aware of Z.G.’s poor living conditions in a squalid Roma settlement since the special report into the minor’s family and personal background, as required under Art 239.2 CCP, had not been carried out. Furthermore, it was only on the day of the trial that Z.G. met a court-appointed legal counsel to defend him. On 1 March 2004, the Three-Member Juvenile Appeals Court of Patras sentenced Z.G. to 16.5 years in prison. Again the court-appointed counsel had no time to prepare the case and neither a background report nor any psychological assessment were introduced.

- **Minors Asylum-Seekers**

There are serious concerns by the excessive number of illegal proceedings against often unaccompanied alien minors asylum-seekers including arbitrary arrests and detention, detention with adults, illegal deportation orders and slow procedures for family reunification.

**Hormez Wisam**, 17 year old, has been sentenced to 4 months imprisonment for illegal entry in Greece, following the obstruction of his asylum-seeker application by Greek authorities. Hormez Wisam and his family illegally entered Greece on July 5th, 2002 and then came to Athens. On November 4th, 2002, Hormez Wisam went to the Aliens’ Department of West Attica in order to submit his application for political asylum. However, instead of providing him with a temporary resident permit, a civil servant of the Department simply stamped his application and added, in hand writing, the date of December 20th, 2002.

On February 10th, 2003 Hormez Wisam was arrested by a police officer for lack of legal documents. Mr. Hormez was not taken to the juvenile’s prosecutor but to the ordinary prosecutor. He was thus tried before the Misdemeanours Court of Athens, without legal representation by a defence lawyer. The court sentenced him to 4 months imprisonment for illegal entry in Greece, suspendable upon execution of his deportation.

Thus, Hormez Wisam was arrested, detained, indicted and sentenced as an adult, although he served his sentence in the Avlona Juvenile Detention Centre, precisely because he was a minor. While Hormez Wisam was serving his sentence, he was finally acquitted on appeal.<sup>285</sup>

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<sup>282</sup> Local newspaper “Peloponissos”, *I finished him off so that he would not writhe*, 02/10/2002

<sup>283</sup> First Instance Court of Patras, decision number 4/2002

<sup>284</sup> Art. 130 CC.

<sup>285</sup> For the insufficient legal representation of Mr. Hormez during his ordeal see supra, fn 96.



Nevertheless, the court declined to judge upon Mr. Hormez's claim for compensation for his unlawful incarceration, despite being mandated by law (Art 536 CCP) to do so.<sup>286</sup>

In summer 2003, GHM along with local NGO activists in the islands of Mytilini and Rhodes, have registered and monitored the illegal detention and related tribulation of unaccompanied minors asylum seekers, arriving in boats from Turkey. In all cases, the Prosecutors at no point did they explicitly decide upon the custody of the unaccompanied minors to the care of special institutions as the law requires<sup>287</sup>. Instead, they were kept in detention and most of them were held for three months with adults. Although the responsibility of the authorities was evident, GHM appeals to the Ministries of Public Order and Justice and the Greek Ombudsman to defend minors asylum-seekers' rights led to either inaction or implicit approval of such events. GHM could not continue its monitoring as its access to the facilities was stopped and the local NGOs were discouraged, even by the Greek Ombudsman, to work with GHM.

- **Border incidents against Albanian minors**

Cases of ill treatment, injuries or death of Albanians trying to cross either legally or illegally the Albanian Greek borders have been reported in the past, but most of them have not at all or very inadequately been investigated and the perpetrators have as a result never been punished. There is an obvious unwillingness from the Greek authorities to act in order to end such a deplorable situation.<sup>288</sup> Greek authorities should take all necessary measures to guarantee the physical and psychological integrity of all persons crossing its border.

**Afrim Salla**,<sup>289</sup> a 15-year-old Albanian, was reportedly wounded by border guards on the night of 7 June 2001 when he crossed the border into Greece illegally with a group of Albanians. The border guards allegedly fired at them, hitting Afrim Salla in the spine that was then permanently paralysed from the waist down. His family allegedly filed a civil claim on his behalf for compensation but the prosecutor deemed there were no grounds for bringing charges against any border guard. Despite that, on August 29, 2003, the Three-Member Administrative First Instance Court of Kozani considered that there was a partial responsibility of the border guard and granted compensation to the plaintiffs.<sup>290</sup>

**Kreshnik Shenaj**,<sup>291</sup> a 17- year-old Albanian, was reportedly beaten by soldiers of a border patrol shortly after he irregularly entered in Greece in November 2000. Reportedly traumatized

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<sup>286</sup> For more details concerning the case of Mr. Hormez, including the racist remarks made by the Appeals Court presiding judge, please see pertinent OMCT release, dated June 26, 2003, available in English at <http://www.omct.org/base.cfm?page=article&num=3345&consol=close&kwr=OMCT&cfid=1285809&cftoken=8456361>

<sup>287</sup> According to P.D. 61/1999

<sup>288</sup> Following a 16 October 2003 appeal to the Deputy Appeals Prosecutor of Kozani concerning relevant cases of Albanians allegedly ill-treated, injured or killed at the Greek-Albanian border, in 2001-2003<sup>288</sup>, Prosecutor Athanasios V. Tsolodimos replied on 17 November that "... we have the honour to inform you that we investigated the cases referred to in your request. Nevertheless, we did not ascertain the presence of factors that would justify further investigation." in GHM press release, 2 December 2003, letter available in English at [http://www.greekhelsinki.gr/bhr/english/organizations/ghm/ghm\\_02\\_12\\_03.doc](http://www.greekhelsinki.gr/bhr/english/organizations/ghm/ghm_02_12_03.doc)

<sup>289</sup> The case was also brought to the attention of UN bodies. See Commission on Human Rights, Fifty-eighth session, Item 11 (a) of the provisional agenda, Civil and Political Rights, Including the Questions of: Torture and Detention, Report of the Special Rapporteur on the question of torture, Theo van Boven, submitted pursuant to Commission resolution 2002/38, E/CN.4/2003/68/Add., paras. 572 and 660, 27 February 2003, at <http://daccess-ods.un.org/access.nsf/Get?Open&DS=E/CN.4/2003/68/Add.1&Lang=E> and Commission on Human Rights, Sixtieth session, Item 11 (a) of the provisional agenda, Civil and Political Rights, Including the Questions of: Torture and Detention, Report of the Special Rapporteur on the question of torture, Theo van Boven, E/CN.4/2004/56/Add.1, par. 660, 23 March 2004, at <http://daccess-ods.un.org/access.nsf/Get?Open&DS=E/CN.4/2004/56/Add.1&Lang=E>

<sup>290</sup> Court Order 266/2003, made public on 29 August 2003.

<sup>291</sup> See Commission on Human Rights, Fifty-eighth session, Item 11 (a) of the provisional agenda, Civil and Political Rights, Including the Questions of: Torture and Detention, Report of the Special Rapporteur on the question of torture, Theo van Boven, submitted pursuant to Commission resolution 2002/38, E/CN.4/2003/68/Add., par. 573, 27 February 2003, at <http://daccess-ods.un.org/access.nsf/Get?Open&DS=E/CN.4/2003/68/Add.1&Lang=E>

and in a state of shock, Kreshnik Shenaj was taken to hospital in Gjirokastra (Albania).<sup>292</sup> No investigation was carried out by the Greek authorities.

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<sup>292</sup>*Koha Jonë* , 21 November 2000

# Recommendations:

## General recommendations:

### Preliminary recommendation

The coalition of NGOs recommends that:

1. The State authorities ensure the implementation of the recommendations already adopted by international and regional human rights treaty bodies.

### Need for information and training:

2. The State should provide adequate professional training of an on-going and mandatory nature at all levels of the law enforcement agencies' hierarchy on how to implement national as well as international human rights standards especially regarding situations involving arrest and questioning of suspects.<sup>293</sup> In the course of training, particular stress should be placed upon the principle that the prohibition of torture is absolute and non-derogable.
3. Training programs should focus on measures to combat racist or xenophobic attitudes amongst law enforcement agents, in order to prevent any discriminatory practices against vulnerable groups, in particular foreigners and ethnic and national minorities.

### Rights of the detainees

4. Steps should be taken to ensure that all detainees (especially immigrant detainees and detainees from minority groups) are systematically provided with a document explaining the procedure applicable to them and setting out their rights; this document should be available in the languages most commonly spoken by those concerned as well as posted in police stations, gendarmeries and prison. A prompt and regular access to lawyers and doctors as well as the right to notify their families should be guaranteed to detainees. Information about complainants procedure should be provided and detainees should be informed that free legal aid is available for those who cannot afford a counsel. Greek authorities should also rigorously implement their pledge to provide NGOs with *"the right of unhindered access to detention facilities, in consultation with the competent services."*

### Judicial system and incrimination of torture

5. Audio and video recordings should be made of interrogations as well as of the time the interrogations began and ended. The names of the officials participating and the other persons present should be recorded.
6. With regard of the Sworn Administrative Inquiry (SAI) procedure, the rights of the complainants and his family should be improved in the relevant legislation. SAI should be conducted by the independent and effective Internal Affairs Division of the Hellenic Police. The procedure should provide to the complainants the results of the inquiry as well as the disciplinary measures taken against the administrative agent. Moreover provisions should be made for the complainant to have access to the hearings, and to

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<sup>293</sup> See also : Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 23 September to 5 October 2001

be involved more directly during the Disciplinary Board Proceedings. All SAI related documents should be made available to the complainants at the end of the procedure.

7. All allegations of torture, ill-treatment or the unlawful use of firearms by law enforcement officials should be subject to prompt, thorough, independent and impartial investigation by the relevant authorities;<sup>294</sup> When a detainee or relative or lawyer lodges a torture complaint, an inquiry should always take place and, unless the allegation is manifestly ill-founded, the public officials involved should be suspended from their duties pending the outcome of the investigation and any subsequent legal or disciplinary proceedings. The Greek Ombudsman should take a more active role in effectively overseeing the conformity of the administrative investigations with Greek law and international standards and act promptly on relevant complaints.
8. Appropriate steps should be taken to ensure that persons who may have been victims of ill-treatment by law enforcement officials are not dissuaded from lodging a formal complaint but instead are encouraged to do it. On the contrary, prosecuting authorities should ensure fair and swift investigation of the allegations and punishment of the perpetrators. The state should reopen cases which led to impunity despite abundant incriminating evidence as well as amend article 137A to insure that all cases of torture and other forms of ill-treatment are considered grave enough so as to preclude suspension or conversion to fines, as with the crime of "resisting authority".
9. Whenever criminal suspects who are brought before a prosecutor or judge allege ill-treatment by law enforcement officials, the prosecutor/judge should record the allegations in writing, order immediately a medical examination and take the necessary steps to ensure that the allegations are properly investigated; Such an approach should be followed whether or not the person concerned bears visible external injuries; and even in the absence of an express allegation of ill-treatment, the prosecutor/judge should request a forensic medical examination whenever there are other grounds to believe that a person brought before the prosecutor/judge could have been the victim of ill-treatment.<sup>295</sup>
10. National legislation and practice should reflect the principle enunciated in article 3 of the Convention against Torture, namely the prohibition on the return (refoulement), expulsion or extradition of a person to another State "where there are substantial grounds for believing that he would be in danger of being subjected to torture". The principle of non-refoulement must be upheld in all circumstances irrespective of whether the individual concerned has committed crimes and the seriousness and nature of those crimes. Asylum determination procedures should pay particular attention to avoiding the retraumatization of applicants.<sup>296</sup>

### **Need for a better monitoring of the conditions of detention**

11. Urgent measures should be taken to improve conditions of detention in police stations and prisons. Moreover undocumented migrants and/or asylum-seekers who have not been convicted of a criminal offence should not be held administratively for long periods in such institutions. Immediate steps should be taken to avoid the holding persons, in

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<sup>294</sup> See also : Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 23 September to 5 October 2001

<sup>295</sup> Ibid

<sup>296</sup> General Recommendations of the Special Rapporteur on torture E/CN.4/2003/68, par. 26.

particular immigration detainees, for prolonged periods in ordinary law enforcement agency detention facilities.

12. The State should establish a system of regular visits to detention facilities by an independent authority to effectively monitor detention conditions. Free access to prison should be effectively practiced and authorized so as to enable NGO and other human rights monitoring services to evaluate detention conditions.

## Recommendations with regard to women

1. Law enforcement personnel in Greece are generally ill-equipped to handle complaints from women and girls alleging that they are victims of rape and other forms of sexual violence. The victim's sexual history is often scrutinized making the victim feel as if she herself is being put on trial. The Greek government should see that all law enforcement personnel are given appropriate gender-sensitive training in responding to cases of rape and other forms of sexual violence against women. Moreover, during the trial, the focus should be on the perpetrator and not on the history of the victim. The law should be revised in such a manner that victims of rape and other forms of sexual violence can not be put under pressure to stop the prosecution of the case.
2. The Greek government must ensure that women victims of violence have access to adequate reparation and remedies.
3. Regarding the issue of trafficking in women and girls into and through Greece, predominantly for the purposes of sexual exploitation, despite the fact that the government has taken some legislative and policy measures to address this issue, a lack of adequate implementation can be observed. The Greek government should see that prosecutors, judges and other law enforcement personnel in Greece should be given training on trafficking in women and girls. The Greek government should also implement adequately and effectively Presidential Decree 233/2003 which implements the victim assistance mechanisms of 3064/2002<sup>297</sup> *"Protection and assistance to the victims of crimes provided for in articles 323A, 349, 351 and 351A of the Criminal Code, in conformity with article 12 of Law 3064/2002."*, in order to insure adequate protection of, effective remedies and compensation to victims, as well as their presence in subsequent trials. For this, the Greek government should make available adequate financial support to the victims and the NGOs defending their rights. The Greek government should also actively combat complicity by the police and other law enforcement officials in the trafficking. The Greek government should finally ratify the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and children, supplementing the United Nations Convention against Transnational Organized Crime
4. Regarding reports of violence against women by state officials, particularly in the case of vulnerable groups, the Greek government should take steps to ensure that all allegations of torture and ill-treatment are promptly, thoroughly and impartially investigated. Those responsible should be identified, brought before a competent and impartial tribunal and the sanction provided for by the law should be applied.
5. The Greek government should furthermore take steps to improve prisons conditions, as there is concern at prison conditions for women in Greece.

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<sup>297</sup> Presidential Decree (P.D.) 233/2003, official gazette issue A 204/2003

## **Recommendations with regard to children**

The coalition of NGOs recommends that:

### **Children in conflict with the law**

1. The government should ensure that special proceedings set up to protect the child when s/he is arrested are properly implemented by police officers, including when dealing with foreign and asylum-seeker minors. To do so, the authorities should particularly train police officers dealing with children by making them aware of children's rights. It should also facilitate effective and independent monitoring mechanisms in police station.
2. Moreover, in order to end impunity, the government should systematically undertake adequate action against state agents who are suspected to have committed violence towards children in breach of their duties.
3. The government should decriminalize begging when it is carried out by children.

### **Juvenile justice system**

4. The government should appoint prosecutors and judges trained and specialized in child issues in all areas of the country. It should also appoint juvenile probation officers according to the needs.
5. The government should ensure that any person who commits an offence before the age of 18 will be judged as a minor according to specific proceedings even if her/his trial takes place when s/he is older than 18 years old.
6. The authorities should ensure the effective legal assistance for children in conflict with the law from the arrest.
7. The authorities should guarantee that minors who have committed an offence when encouraged by their parents or custodians are not then taken back to them without investigation into the situation of the child offender's family.

### **Deprivation of liberty**

8. The Greek authorities should ensure that child deprivation of liberty, including pre-trial and pending-trial detention, is used only as a measure of last resort and for reasonable grounds and according to the best interest of the child.
9. The government should ensure education of the minors in detention by trained and specialised teachers and social workers as well as psychological follow-up.

### **Corporal punishment in state institutions**

10. The Greek state should globally prohibit corporal punishment in all schools and all institutions welcoming children and provide effective implementation of the legal prohibition.

11. The government should provide adequate investigations into the events happened in the “Agia Varvara” children’s institution.

### **Trafficking**

12. The government should fight against child trafficking not only through legislative and judicial efforts, but also through population’s sensitization campaigns of the sexual exploitation, the trafficking of children and their abuses in Greece.

### **Discrimination**

13. The government should end discrimination against juvenile offenders of non-Greek origin.

## Annex I: DOMESTIC VIOLENCE AGAINST WOMEN IN GREECE

In April 2004, commenting on Greece's answer to the UN Committee on CESCR, Greek Helsinki Monitor (GHM) and Minority Rights Group-Greece (MRG-G) stressed that women continue being victimized. Given that, as the Greek state admits, the draft law on domestic violence has not yet been finalized, women keep facing the results of marital rape, which is not yet a crime.<sup>298</sup> OMCT, in its intervention on the implementation of the International Covenant on Economic, Social and Cultural Rights by Greece in May 2004, noted that marital rape not being a crime under the Greek Criminal Code allows the marital relationship to figure as a cover for violence in the home.<sup>299</sup>

Actually there is no adequate, comprehensive data on the extent of domestic violence suffered by Greek women. It has been estimated, however, that 83% of Greek women has suffered from some form of domestic abuse, either psychological or physical; 16% of these women have experienced psychological, physical and sexual violence together.<sup>300</sup> In their report in 2002, OMCT and GHM reported that the Reception Center for Abused Women of the General Secretariat for Gender Equality (GSGE) in Athens, had received more than 3000 cases since it begun functioning in 1989, and in 2001 alone, 5278 women have called the Center asking for help. Most of the women accessing the Center have experienced long-term domestic abuse that ranges from 15 to 45 years and belong to an age group of 30 to 70 years old. Younger women aged 25 to 35, access the Center after 5 to 15 years of domestic abuse.<sup>301</sup>

While the law prohibits all violence, it does not specifically prohibit domestic violence. The GSGE, an independent government agency, runs two shelters/reception centres for abused women and their children, in Athens and Piraeus that offered services, including legal and psychological help, but they were often inadequately staffed and provided no hospitality. There is one more battered women's shelter – that is not mentioned in the U.S. report – operated by the Orthodox Church-affiliated NGO KESO. However there is only one Guest House available, functioning under the auspice of the GSGE and the Municipality of Athens, of limited capacity (operating since 1993). In 1998, the GSGE also created the Battered Women's Centre in Athens. The GSGE operated a 24-hour emergency telephone hotline for abused women. In June, the Ministry of Health and Welfare started the Emergency Social Care Unit (EKAKB), which operated a hotline providing referrals and psychological counselling. An inter-ministerial committee composed of the GSGE, the Ministry of Public Order, the Ministry of Health and Welfare, and the Ministry of Justice, shared information on women's issues. Yet, there has not been any systematic impact assessment of all these initiatives or any systematic data collection.

The reported incidence of violence against women was low. However, the GSGE believed that the actual incidence was high, while it estimated that only 6 to 10 percent of the victims contacted the police, and only a small fraction of those cases reached trial.<sup>302</sup> In May 2004, the

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<sup>298</sup> GHM-MRG-G comments on Greece's replies to the UN Committee on Economic, Social and Cultural Rights (CESCR), April 2004

<sup>299</sup> OMCT Intervention on the implementation of the International Covenant by Greece, Committee on Economic, Social and Cultural Rights, 32<sup>nd</sup> Session, 26/04-14/05/2004

<sup>300</sup> Daily newspaper, "To Vima", 03/03/2002

<sup>301</sup> GHM-OMCT, "Violence against Women in Greece", A report prepared for the Committee on the Elimination of Discrimination against Women at its Exceptional Session, 5-23 August 2002, July 2002, at [http://www.greekhelsinki.gr/bhr/english/organizations/ghm\\_omct\\_cedaw.doc](http://www.greekhelsinki.gr/bhr/english/organizations/ghm_omct_cedaw.doc)

<sup>302</sup> U.S. State Department, Country Reports on Human Rights Practices - 2003: Greece, Released by the Bureau of Democracy, Human Rights, and Labor, 25/02/2004, at <http://www.state.gov/g/drl/rls/hrrpt/2003/27840.htm>



Committee on Economic, Social and Cultural Rights,<sup>303</sup> also expressed its concern about the high incidence of domestic violence and marital rape, which often remain unreported for cultural reasons and economic dependency of female spouses on their husbands. In practice, conviction rates for rape were low for first time offenders, but sentences were harsh for repeat offenders. While non-consensual sex in any setting is a crime, law enforcement officials and courts did not treat spousal rape as harshly as extramarital rape.

The GSGE claimed that police tended to discourage women from pursuing domestic violence charges and instead encouraged them to undertake reconciliation efforts. The GSGE also claimed that the courts were lenient when dealing with domestic violence cases. The GSGE, in cooperation with the Ministry of Public Order, continued training courses for police personnel on how to treat domestic violence victims.<sup>304</sup>

What is not taken into account is the special relationship and the interdependence that exist between the victim and the perpetrator of domestic violence. Most Greek women suffering from abuse do not press charges against their abusive partners for the following various reasons: apart from the heaviness of the judicial system regarding family violence (on average, a criminal case takes 3-5 years for complete adjudication); there is an extremely limited infrastructure for the empowerment and support of victims of family violence. Subsequently, even if a woman chooses to take legal action against her violent spouse and press criminal charges, there is no welfare solution or alternative provided to her by the State, such as adequate support facilities that may provide help and protection to her and her children for the years she will be involved in judicial adventures.

In addition to the fact that there is no effective legislation to deal with domestic violence and a lack of support from public authorities, women subjected to domestic violence often choose also not to pursue criminal complaints due to social and familial pressure. Another obstacle concerns the fact that incidents of domestic violence, when reported, are usually regarded by police officers and often judges, as private matters that fall outside their mandate and in many cases the abused woman is encouraged to settle for an extra-judicial compromise. Even doctors in hospitals try to reduce the importance of the incident and to persuade the woman victim to prioritise the family unity, also because they are reluctant to find themselves involved in judicial proceedings as witnesses.

NGOs in Greece are very concerned that rape as a criminal act is limited to extra-marital situations. However, marriage may not, in any circumstances, relieve the husband of the criminal responsibility, if he is the perpetrator of rape. The impunity enjoyed by the husband who forces his wife to have sexual intercourse nullifies the enjoyment of women of their right to equality and heightens the risk of physical and psychological violence in the home.

Academic research conducted on a sample of 551 people (213 men and 338 women), aged 18-24 years, all students of Greek universities, revealed the following: questioned whether it is possible for a woman to be responsible for her abuse, the results are indicative of the Greek mentality: 48% states that a woman is rarely responsible for the abuse she suffers, whereas 27.6% states that sometimes it is the woman who provokes the abuse. Moreover, 11.6% holds the woman completely responsible for the abuse she suffers since she herself provokes it, and

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<sup>303</sup> Concluding Observations of the Committee on Economic, Social and Cultural Rights: GREECE, Thirty-second session (26 April – 14 May 2004), *Consideration of Reports Submitted by States Parties under Articles 16 and 17 of the Covenant*, E/C.12/1/Add.97, 14 May 2004, at <http://www.ohchr.org/tbruce/cscr/Greece.pdf>

<sup>304</sup> U.S. State Department, Country Reports on Human Rights Practices - 2003: Greece, Released by the Bureau of Democracy, Human Rights, and Labor, 25/02/2004, at <http://www.state.gov/g/drl/rls/hrrpt/2003/27840.htm>

10% considers that women often provoke the violence they are subjected to. It is worth noting that only 7.4% relieve women of any culpability regarding the violence they suffer.<sup>305</sup>

Girls as young as 13 to 16 years-old, members of the socially excluded minority of Roma Muslims – who have migrated from Thrace and live in degraded neighborhoods in the center of Athens – become easily victims of domestic violence. The *Social and Educational Action-Center for the Support of Children and Family*, that has served 450 families of Roma Muslims (both Romani and Turkish speaking) and to a lesser extent Albanian Roma mothers (2%) and economic migrants of that area, has reported 40 cases of women victims of domestic violence just in the first half of 2004. These girls are forced to get married – psychological and physical violence are both used to this end – so as to satisfy the financial interests of their families and thus be more easily controlled by their highly conservative society. Thus, they end up choosing abortion – whenever possible, since even this choice is considered to be a right of the husband – up to, in one case, 20 abortions. Having had 5 children at the age of 18 years, they also find a solution in sedatives and anti-depressing pills. This is their way out of domestic violence, since part of their conjugal duties is to learn how to tolerate violence from their husband – a boy of even 16 years-old who is also trying to find his way from childhood to adulthood – in order to get disciplined.

Founded in 1994, the Research Centre for Gender Equality (KETHI)<sup>306</sup> operates in Athens, with branches in Thessaloniki, Patras, Volos and Heraklion, under the supervision and funding of the GSGE of the Ministry of Interior, Public Administration and Decentralisation. Its campaign “Break the Silence” (2000) organised to sensitise public opinion and official agencies about domestic violence – with the funding of the European Commission and the GSGE – included television and radio messages and the production of an homonymous information leaflet. Following its publication, KETHI received many cases of women-victims of violence.

According to a 2003 survey conducted by KETHI between October 2002 and April 2003<sup>307</sup> – among 1,200 women, between 18 and 60 years old – 56% of women stated they have suffered verbal or psychological violence, 3.6% physical violence,<sup>308</sup> while 23.6% of women know a female relative or friend who has been the victim of domestic violence.<sup>309</sup>

The research showed that only 58.6% of the women that define themselves as victims of psychological/verbal violence recognize the specific type of abusive behavior as violent. Only 37.1% of the women that suffer physical abuse consider the behavior to be violent. The same occurs in the case of the women who are victims of sexual abuse: only 29.5% of the ones that report that they have been forced/are forced by their husband/partner to have sexual intercourse recognize the abusive behavior of the latter as violent.<sup>310</sup>

The woman-victim of domestic violence reacts in various ways, depending on the type of violence she suffers, its intensity and its duration. The main reactions of the women that characterize themselves as abused – irrespective of the type of violence – try to calm down the perpetrator (34.3%). Some of them threaten the perpetrator with separation (26.7%), try to

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<sup>305</sup> GHM-OMCT, “Violence against Women in Greece”, A report prepared for the Committee on the Elimination of Discrimination against Women at its Exceptional Session, 5-23 August 2002, July 2002, at [http://www.greekhelsinki.gr/bhr/english/organizations/ghm\\_omct\\_cedaw.doc](http://www.greekhelsinki.gr/bhr/english/organizations/ghm_omct_cedaw.doc)

<sup>306</sup> Research Centre for Gender Equality (KETHI), at <http://www.kethi.gr/english/bia/index.htm>

<sup>307</sup> KETHI, “*Domestic Violence against Women: The first Epidemiological Research in Greece*”, p. 54, Athens, 2003, at [http://www.kethi.gr/greek/meletes/2003/Domestic/domviolencefinal\\_1103.pdf](http://www.kethi.gr/greek/meletes/2003/Domestic/domviolencefinal_1103.pdf) (in Greek)

<sup>308</sup> *Ibid.*, pages 78-80.

<sup>309</sup> *Ibid.*, page 66.

<sup>310</sup> *Ibid.*, page 103.

escape (22.9%) or react as violently (22.9%). Some of them also choose to confide in relatives or friends (20%).<sup>311</sup>

Women that face some kind of problems in their everyday life with their husband/partner suffer also some type of violence by the latter. Verbal/psychological violence is the type of abusive behavior with the highest percentage, compared to physical or sexual violence.<sup>312</sup>

The results of the research show that the woman's reaction differs depending on the degree in which she feels responsible for the cause of the abusive behavior, being in a situation of learned helplessness. The majority of the women that characterize themselves as abused (8.75%) have the following reactions: they try to calm down the perpetrator (59.3%), they threaten to talk to relatives/friends (48.15%), they try to escape (44.45%) and talk to relatives/friends (44.45%). It is interesting to note that none addressed a social service (0%).<sup>313</sup>

The data of the research confirms that there is a relationship between the type of reaction of the victim and the time frame within which the violence takes place. Among the women that call themselves victims of their husband's/partner's violence (8.75%), the ones that have been experiencing violence for a period of 7 to 12 months usually try to calm down the husband/partner (66.7%), believing that this way they will put an end to the violence. Most women threaten the perpetrator with separation (38.1%), when there has been violence in the relationship for a period of 1 to 5 years. When violence has lasted for 6 to 10 years, the victims usually leave home (31.3%), threaten the perpetrator with separation (31.3%) or try to calm him down (31.3%). Finally, women that have been victims of domestic violence for more than 10 years end up readopting a more passive attitude, trying to calm down the perpetrator (39%), in their effort to "survive" in a relationship where violence has been consolidated and keeps making circles.<sup>314</sup>

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<sup>311</sup> *Ibid*, page 104.

<sup>312</sup> *Ibid*, page 106.

<sup>313</sup> *Ibid*, pages 106-107.

<sup>314</sup> *Ibid*, page 110.

## Annex II: DOMESTIC VIOLENCE AGAINST CHILDREN IN GREECE

### 1. The protection of the child within the family

*Abuse of children – A family affair?*

#### Some statistics:

Greece's Initial Report (2002) submitted in the context of the UN Convention on the Rights of the Child reports on some of the research findings of the Institute of Child Health in Athens<sup>315</sup>:  
"... the mortality rate among physically abused and neglected children is 6%, while the rate of permanent disability is 8%. Several research projects have been conducted on the use of corporal punishment in education, based on different samples of populations. In a project conducted in the schools of the Greater Athens area, it was discovered that 50% of the fathers of primary school children administered corporal punishment to their children. This project also found that more mothers (65%) than fathers beat their children by hand or using various objects. A research project conducted among Greek students aged 18-20 years discovered that 70% of them had experienced corporal punishment from their parents at various ages up to majority."<sup>316</sup>

Moreover, 65.5% of mothers reported using physical punishment on their children, with mothers of 6 year-olds three times more likely to do so than mothers of 12 year-olds. 4% of children who were physically punished suffered minor injuries such as a bleeding nose and scratches, 1.2% suffered more severe injuries requiring stitches and/or hospitalisation.<sup>317</sup> In a 1993 national cohort of 8,158 children aged 7, one in three (37.7%) were spanked at least once a week and one in six daily (18%).<sup>318</sup> An analysis of calls to "Smile of the Child", an SOS hotline for abused children, reports that 46% of the calls it receives in one area are related to family members physically beating their children.<sup>319</sup>

The most recent research (2004) on "Child abuse", conducted for the Panteion University of Athens, showed that 59,61% of Greek people knew of an incident of child abuse (corporal 74.85%; 11.39% sexual; 14% both types) but the majority chose not to intervene (33.14%) [while there was also personal intervention (31.95%), report to authorities or agencies (18.20%) or third parties (15.98%)]. Reporting to authorities and mainly to the police (52.03%) and to social services (32.52%) left many satisfied (34.15%) or partly satisfied (37.40%). Yet the abuse stopped only temporarily (32.41%) and not permanently (12.04%). This could be also because the perpetrators of child abuse were mainly the parents (57.99%) or relatives (14.94%). It is important to note that those who chose not to intervene did so because they considered that the incident was a private, domestic issue (26.79%); they were afraid of the consequences (24.11%) or found the intervention pointless (21.43%).<sup>320</sup>

<sup>315</sup> Institute of Child Health in Athens, Department of Family Relations, 591 structured interviews were carried out with mothers of 6 year-old and 12 year-old schoolchildren (1994-1997)

<sup>316</sup> Greece's Initial Report under the Convention on the Rights of the Child, CRC/C/28/Add.17, submitted April 14, 2000, page 61,

<sup>317</sup> Fereti, I. & Stavriani, M. (1997), "The use of physical punishment in the Greek family: selected socio-demographic aspects", *International Journal of Child and Family Welfare*, vol. 3, pp.206-216; Fereti, I. (2002), "Initiatives to reduce and prevent corporal punishment of children within the family in Greece", Athens: Institute of Child Health).

<sup>318</sup> Agathonos-Georgopoulou, H. (1997), "Child Maltreatment in Greece: A Review of Research", *Child Abuse Review*, vol. 6, pp. 257-271).

<sup>319</sup> Greek Helsinki Monitor and Minority Rights Group – Greece: "Parallel Report on Greece's Compliance with the UN Covenant on Economic, Cultural and Social Rights, September 2002, Extracts

<sup>320</sup> The research was conducted by the Professor of Criminology Antonis Magganas and the sociologist Theano Manoudaki. It lasted 2.5 years and used a sample of 1134 people (women 56%; men 44%). See also: daily newspaper "Eleftherotypos", *Abuse has a full name*, 19/09/2004, at [http://www.enet.gr/online/online\\_text?dt=19/09/2004&c=112&id=80602108](http://www.enet.gr/online/online_text?dt=19/09/2004&c=112&id=80602108)

Although Greece has a generally progressive legislative framework regarding children's rights, its effective implementation is unfortunately restricted both by the lack of specific legislative provisions and by a widespread mentality among the Greek society that children are not bearers of rights but rather objects of protection.

Thus, children are not treated as independent persons but rather as appendages of their families, who have the first and final word on issues concerning their education and upbringing. In the wider context of Greek societal norms, the institution of the family is sacred and inviolable,<sup>321</sup> and conflicts between members of the family are to be resolved within the family.

This attitude is also prevalent among state officials. For example, in cases where police officers bring a child before a Juvenile Probation Officer, the latter usually calls for the return of the child to his/her parents and admonishes. In fact, it appears that state agencies are more likely to act when a child's parents or relatives cannot be traced (for example in the case of the Albanian "street children" of the "Agia Varvara" institution.– see Part 3 section 3.2.c. supra ).<sup>322</sup>

The issue of corporal punishment is particularly interesting on this point. Indeed, while Greek law does not contain any provisions explicitly prohibiting corporal punishment of children at home, Greece's Constitution and the CRC it has ratified both prohibit torture and other forms of violence. In practice, though, traditional attitudes towards children and parental authority and discipline in Greece do not interpret these texts as prohibiting all corporal punishment – which remains common and socially approved – and all other forms of degrading punishment or treatment.

## **2. The Greek legal framework**

### **2.1. Civil law**

- The Greek Civil Code (GCC) contains many provisions that aim to protect the child from violations of his/her rights.

Thus, under Article 1511 GCC, the parents' decisions concerning the child should always serve the latter's interests, and, according to the same article, the opinion of the child should always (depending on his/her maturity) be sought and taken into account.

Moreover, under Article 1512 GCC, when parents disagree on an issue pertaining to their child's upbringing and are unable to reach a decision, the court can make the decision (if the interests of the child so require). Similarly, under Article 1517 GCC, a special guardian is to be appointed in cases where the interests of the child are in conflict with those of his/her parents or guardians.

Under the provisions laid down in Articles 1532-1533 GCC, the court, upon receiving notice from the other parent, a relative or the prosecutor, can order any appropriate measure against a parent who violates his/her duties towards his/her child, or is unable to take proper care of his/her offspring. Removal of custody from a parent is the most severe measure than can be

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<sup>321</sup> Indeed, Art 21.1 of the Greek Constitution characterizes the institution of family as "*cornerstone of the preservation and the advancement of the Nation [which] shall be under the protection of the State*". The Greek Constitution is available in English at [http://confinder.richmond.edu/greek\\_2001.html](http://confinder.richmond.edu/greek_2001.html)

<sup>322</sup> Memorandum on Children's Rights, p 1.

imposed. In this case, custody would be entrusted to the other parent or to another (foster) family or, should that fail, to an institution.

Finally, Article 1537 of the GCC calls for a parent who has been irrevocably sentenced to at least one month's prison term for maliciously committing an offence against his/her child to be debarred from exercising any parental rights over that child, or, if circumstances so warrant, over his other children as well.

- Regarding the issue of corporal punishment of children, according to Article 1518 GCC, *"taking correctional measures is allowed only if they are pedagogically necessary and do not harm the child's dignity"*. Not only does this provision not clearly prohibit all corporal punishment, but it could also be interpreted as allowing parents to use moderate forms of corporal punishment. The reality is that traditionally in Greece, correctional measures at home have included corporal punishment, and would therefore be regarded by many parents as "pedagogically necessary".

## **2.2. Criminal law**

A number of criminal law provisions lay down penalties, including removal of custody, for parents who abuse or neglect their children.

Thus, Article 312 of the Criminal Code (CC) provides that a parent or a custodian who either physically abuses or neglects his/her child who, as a result of this neglect, suffers an injury, is liable to a prison term of up to three months, if no heavier sentence is applicable.

Article 360.1 CC states that if a parent or a person exercising custody over a child fails to prevent him/her from committing a criminal act, he/she is liable to a prison sentence of up to one year, unless another applicable criminal provision has a heavier penalty. Article 360.3 provides for a heavier penalty (prison sentence of up to two years) if the person / parent exercising custody over the child has been, under Art 122 CC, assigned with the "responsible supervision" (a type of reformatory measures) of the child.

Similarly, Article 409 CC calls for a prison sentence of up to six months and/or a fine for those parent(s) or custodian(s) who either send their children to beg or fail to exercise the necessary care to prevent them from begging.

- In fact, in the absence of any other explicit prohibition, Greek law encourages the public and parents to believe that only extreme forms of violence are prohibited. If bodily harm is caused within the framework of parental correctional measures, the unjustified character of the act is removed. This means that in such cases it is not a criminally punishable act.

### **1. In practice: the poor implementation of provisions aimed at protecting children**

Although certain provisions in Greek legislation do offer adequate protection for children's rights, their impact remains limited, as their implementation still leaves much to be desired.

Under Law 2447/1996, all questions regarding family law should be adjudicated before a special court composed of judges qualified in family matters and in children protection, the so-called "Family court" that would be set up in the seat of every First Instance Court in Greece.<sup>323</sup> Moreover, under Articles 49-51 of the same Law, a special "social service agency" should also be set up in the seat of every First Instance Court.

Nevertheless, both the family courts and the social services departments provided for by Law 2447/1996 have yet to be set up. As a result, cases concerning the custody of children are adjudicated by "ordinary" first instance courts, whose members lack the necessary expertise in dealing with such sensitive issues. Similarly, the non-functioning of the "social service agencies" effectively means that the Ministry of Health and Social Solidarity's social workers have to take up an additional difficult task, namely that of conducting investigations into allegations of child abuse, reporting to the court and/or the prosecutor and cooperating with these authorities. Their work is also made difficult, because the relevant departments are understaffed, and the social workers have neither the training nor the mandate to investigate the complicated issue of child abuse, nor can they, without prior permission by the Prosecutor, carry out house visits in order to examine whether the child is being abused or not.

- The following case, mentioned in the *Ombudsman's Report 2003*, illustrates the obstacles a parent or child faces when he/she wishes to take action against an abusive spouse or parent respectively. In addition, the case below illustrates the ambivalent situation of the responsible state institutions before they intervene, and the limited efficiency of counselling/support services.

The Ombudsman's Office received on February 2003 a complaint by a mother and her daughter in which they alleged that the latter had recently suffered yet another incident of physical ill-treatment from her alcoholic father and remained in bed for one week as a result of the injuries.

The local police station and prosecutor's office did not initiate any action because both the mother and the daughter had expressly stated that they did not want to file charges against the father, hoping that he would not abuse his daughter again, as he had promised. But, he did it again a few weeks later and they had to leave home, together with the other children. Moreover, the local Department for Health and Social Solidarity was understaffed and the only member was a social worker, serving in a nearby island. Finally, on the Ombudsman's initiative, the mother was provided with free legal aid and filed an application for interim measures concerning the removal of the children's custody from their father.

Had it not been for the time and energy that the Ombudsman devoted to the case, the daughter would have joined all the other children who are abused in silence by their parents, with the injuries they sustain being classified as "accidental".<sup>324</sup>

#### ▪ The Greek Ombudsman

Law 3094/03 redefines the duties and the function of the independent authority "The Greek Ombudsman,"<sup>325</sup> thus extending its mission to the defence and promotion of children's rights, with the newly founded Department of Children's Rights. In this framework, the Ombudsman also intervenes in those cases where the infringement upon the child's rights takes place within

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<sup>323</sup> There are currently 63 First Instance Courts in Greece.

<sup>324</sup> According to the NGO Report, *op.cit.*, p 7, "Studies have indicated that a substantial amount of recorded home accidents for children under 4 years of age, and especially those under 1 year, is due to non-accidental injury (i.e. abuse or neglect)."

<sup>325</sup> The Ombudsman in Greece functions since 1998, while the new department was established on 15 July 2003.

the family or even within the exercise of parental care, and takes action following individual complaints (which may be lodged by the child himself/herself, a relative or a third person with direct knowledge of the infringement) or on his own initiative, if regarded as necessary in the cases of serious infringements.

The Greek Ombudsman's Children's Rights Department has referred to recent research which *"has indicated that corporal punishment is used as a disciplinary method by a high percentage of parents in Greece"*. The Department *"argues for a solemn statement in the Greek Civil Code, which will specify that acts of physical punishment do not fall within the scope of the permissible disciplinary measures of Article 1518 of the Civil Code"*. Furthermore, the Ombudsman has proposed that such a change in the Greek Civil Code *"should be followed by a campaign informing and sensitising parents on avoiding the use of any form of physical punishment."*<sup>326</sup>

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<sup>326</sup> Statement of the Greek Ombudsman in the Annex of the complaint No. 17/2003 World Organisation Against Torture (OMCT) v. Greece, lodged on 28 July 2003 and declared admissible on 9 December 2003, at [http://www.coe.int/T/E/Human%5FRights/Esc/5%5FCollective%5Fcomplaints/List\\_of\\_collective\\_complaints/RC17\\_admiss.asp#TopOfPage](http://www.coe.int/T/E/Human%5FRights/Esc/5%5FCollective%5Fcomplaints/List_of_collective_complaints/RC17_admiss.asp#TopOfPage)