CONTRIBUTION TO THE LIST OF ISSUES
PRIOR TO THE SUBMISSION OF THE PERIODIC REPORT OF GREECE

GREEK HELSINKI MONITOR

SOKADRE

Coordinated Organizations and Communities for Roma Human Rights in Greece

MINORITY RIGHTS GROUP - GREECE

OMCT SOS-Torture Network

Athens and Geneva, 21 February 2014

1. Introduction

This submission sets out the key areas of concern which we consider the Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Committee) should pay regard to when developing the List of Issues Prior to Reporting in respect of Greece's periodic report. These areas are effective impunity, conditions in prisons and deportation centers, violence against Roma, the lack of implementation of decisions from international bodies, insufficient implementation of the Committee's concluding observations, and trafficking of human beings.

2. Effective Impunity

The Committee expressed concern at the limited number of torture or ill-treatment cases that have been prosecuted, the very limited number of final convictions, and the lack of sanctions in cases with convictions due to mitigating circumstances. The Committee added that only one case has resulted in a conviction under the torture article. Indeed, on 13 December 2011, the Athens Mixed Jury Court convicted a retired police officer for two acts of torture with electroshocks using a stun gun directed towards two youth, Georgios Sidiropoulos and Ioannis Papakostas in Aspropyrgos (Attica) on 14 August 2002. It was the first case in Greece in which a court handed a conviction on torture (Article 137A paragraphs 1 and 2 of the Criminal Code). Article 137B paragraph 1a was also applicable. Since electroshocks had been used, the minimum sentence was confinement of at least 10 years. Yet, the court recognized as a mitigating circumstance the good behavior of the defendant after the commission of the crime (Article 84 paragraph 2e). Hence, according to Article 83, the sentence of confinement to a minimum of 10 years was replaced by a sentence of confinement with a minimum of five years and maximum of twelve years, or a sentence of imprisonment between two and five years. The court then imposed the minimum confinement sentence of five years for each act of torture. Finally, on the basis of Article 94, the final compound punishment for concurrent offenses was the sentence for the first offense (5 years) increased by the minimum of one year for the second offense (the maximum was three quarters of the sentence that is three years), that is six years. That sentence has been suspended pending the appeal hearing which in turn was delayed as the Athens Mixed Jury Court refused to publish its judgment. Subsequently, Greek Helsinki Monitor filed a complaint with the President of the Supreme Court on 20 June 2013. As a result, the judgment was published in the summer of 2013 and the presiding judge of the Athens Mixed Jury Court was subjected to a disciplinary proceeding. The appeals trial before an Athens Mixed Jury Appeals Court was held on 14 February 2014. The retired police officer was again convicted for torture. This time, his sentence was not confinement but imprisonment of four years for each act with the final compound punishment for concurrent offenses being five years (4 + 1 years). This more lenient sentencing had as a result the conversion of the imprisonment sentence into a pecuniary fine with the minimum conversion rate possible of 5 euros per day (the maximum is 100 euros per day) and the maximum installment period for the payment of 36 months (the minimum is 24 months). Hence, the appeals court handed an even more lenient sentence allowing the police officer to walk free and effectively pay some 500 euros per month for three years. If the confinement sentence of the first instance trial had been upheld on appeal, the convicted torturer would have served at least two years of that sentence. The police officer has the possibility to file for cassation which will further delay the finalization of the judgment for torture committed almost twelve years ago. In any case, the lenient sentence is effectively tantamount to impunity for the only case in Greek history where a police officer was convicted for torture and not mere ill-treatment.

Questions:

1. Please provide detailed data with respect to persons tried and convicted, including the punishments received, for the crime of torture, attempted torture and complicity or

participation in torture.

2. Please clarify for the Committee which sections of the Greek Penal Code were violated in such cases and whether the perpetrators actually served any part of their prison sentence.

3. Please explain existing legislation on the punishment of torture and ill-treatment and the array of resulting sentences including when there exist mitigating circumstances.

4. Please inform the Committee if the government plans to amend legislation to make sure that persons convicted of torture or ill-treatment are punished with effective sentences proportional to the gravity of these crimes.

3. Conditions in Prisons and Deportation Centers

Conditions of detention remain alarming. We previously reported on the precarious detention conditions that significantly fall short of the minimum standards laid down by national and international law.[1] The situation has not considerably improved since. The conditions in detention centers have also produced numerous judgments by the European Court of Human Rights (ECtHR). Since June 2012, the ECtHR found that Greece had violated Article 3 of the European Convention on Human Rights on account of prison and deportation center conditions in no less than 16 cases.[2] The main concerns are overcrowding, lack of hygiene, shortage of food, air, lights and beds, lack of access to yards, poor sanitary conditions as well as lack of access to medical treatment.

The situations in deportation centers are especially precarious. For instance, the case of *Mahmundi v. Greece*[3] decided by the ECtHR concerned the detention of an Afghan family, including a woman who was eight months pregnant and four minors, in a detention center and an overheated shipping container without access to medical or social care. In addition, the children were separated from their mother at several occasions and detained with adult strangers. While the establishment of more penitentiary centers and pre-removal centers, as reported in the state party's follow-up report from June 2013,[4] is an effective mean to address overcrowding, it is not the only solution for administrative detention. Administrative detention

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[1] See e.g. Greek Helsinki Monitor, Coordinated Organizations and Communities for Roma Human Rights in Greece, Minority Rights Group Greece and World Organization Against Torture, Alternative Report to the United Nations Committee Against Torture, 48th Session, 20 April 2012.

[2] European Court of Human Rights, *Kanakis v. Greece (No. 2)* (Appl. No. 40146/11), Judgment (First Section), 12 December 2013; *Khuroshvili v. Greece* (Appl. No. 58165/10), Judgment (First Section), 12 December 2013; *B.M. v. Greece* (Appl. No. 53608/11), Judgment (First Section), 19 December 2013; *C.D. and Others v. Greece* (Appl. Nos. 33441/10; 33468/10; 33476/10), Judgment (First Section), 19 December 2013; *Horshill v. Greece* (Appl. No. 70427/11), Judgment (First Section), 1 August 2013; *Aslani v. Greece* (Appl. No. 36401/10), Judgment (First Section), 17 October 2013; *A.F. v. Greece* (Appl. No. 53709/11), Judgment (First Section), 13 June 2013; *Chkhartishvili v. Greece* (Appl. No. 22910/10), Judgment (First Section), 2 May 2013; *Tzamalis and Others v. Greece* (Appl. No. 15894/09), Judgment (First Section), 4 December 2012; *Nieciecki v. Greece* (Appl. No. 11677/11), Judgment (First Section), 4 December 2012; *Lin v. Greece* (Appl. No. 58158/10), Judgment (First Section), 6 November 2012; *Dimitros Dimopoulos v. Greece* (Appl. No. 49658/09), Judgment (First Section), 9 October 2012; *Ahmade v. Greece* (Appl. No. 50520/09), Judgment (First Section), 25 September 2012; *Bygylashvili v. Greece* (Appl. No. 58164/10), Judgment (First Section), 25 September 2012; *Mahmundi and Others v. Greece* (Appl. No. 14902/10), Judgment (First Section), 31 July 2012; *Lica v. Greece* (Appl. No. 74279/10), Judgment (First Section), 17 July 2012.

[3] *Mahmundi and Others v. Greece*, ibid.

[4] Committee against Torture, Follow-up State party's report, UN Doc. CAT/C/GRC/CO/5-6/Add.1, 5 June 2013, pp. 1 and 3.

on the grounds of irregular entry into the country should not be applied to asylum seekers. Particularly, asylum seekers should only in exceptional circumstance be subject to administrative detention. Moreover, the length of administrative detention of undocumented migrants should be as short as possible.

Questions:

1. With reference to the previous conclusions and recommendations of the Committee, please provide updated information on the steps taken to improve the situations in prisons and deportation centers, especially the steps taken in order to address overcrowding, and poor living and sanitary conditions in detentions facilities.

2. Please provide statistics of the number of children in detention centers, disaggregated by sex, age and ethnicity. Please provide information on the duration of detention of undocumented migrants and asylum seekers.

4. Violence against Roma

Excessive and abusive police violence are a manifestation of long standing discrimination of Roma. Incidents as described in the following are not a rarity: In 2012, two plainclothes security police officers carrying out an operation searching for drugs, proceeded to check a car with three Roma men. Two of them were severely injured after one of the officers fired warning shots according to the police, direct shots according to the Roma. The two men also alleged that the police officer who fired the gun continued to point his gun at them even after they were lying injured on the ground, beat them and threatened to kill them if they did not comply with his orders. Police officers who came after the incident allegedly beat them while they were lying on the ground. According to the police, criminal investigations were conducted by the Northeast Attica Security Police Sub-Directorate. Since the police officers involved belonged to that police agency, the investigation lacks at least objective if not also subjective impartiality, especially as there was no announcement of whether an independent sworn administrative inquiry will be launched as required by law when police guns are used. The two Roma who were injured subsequently filed a criminal complaint against the police officers for the violation of Article 137A paragraphs 2 and 3 of the Criminal Code (torture and causing bodily harm in the form of offense to human dignity). They also called for an investigation of the racial motivation because of their Roma identity (Article 79 Criminal Code) as the police officers kept addressing the civilians as Roma during the incident and their identity was mentioned extensively in the police reports included in the criminal brief against them.[5]

Questions:

1. With reference to the previous conclusions and recommendations of the Committee, please provide information on how prejudice against Roma, especially within the police forces, are addressed.

2. Please submit data on the discrimination related violence including on the prosecution of police officers in relation to racial discrimination.

3. Please also provide information on the recruitment of police officers from minorities including Roma.

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[5] Hellenic Police, Ministry of Public Order and Citizen Protection, Press Release from 3 April 2012, available online:
<http://www.astynomia.gr/index.php?option=ozo_content&lang=%27..%27&perform=view&id=13591&Itemid=879 &lang=>.

5. Lack of Implementation of Decisions from International Bodies

Greece does not implement decisions by international human rights bodies that found serious violations of torture, inhuman or degrading treatment. Insofar, Greece has not yet executed 33 judgments of the ECtHR finding a violation of the prohibition of torture, inhuman or degrading treatment.[6] In addition, Greece refuses to give effect to several Human Rights Committee (HRC) decisions. In 2008 (*Andreas Kalamiotis v. Greece*[7]) 2010 (*Antonios Georgopoulos and Chrysafo Georgopoulos v. Greece*[8]) and 2012 (*Nikolaos Katsaris v. Greece*[9]), the Human Rights Committee adopted its views to three cases directed against Greece in which it found a violation of Article 7 of the ICCPR.[10] In all three Views, the HRC concluded that "in accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, as well as reparations to include compensation." In the cases of Katsaris and Kalamiotis, police actions that had led to the violations had occurred more than five years before the publication of the views (in 1999 and 2001 respectively); thus, the consequent misdemeanors crimes had become time-barred. Hence, the perpetrators of these police actions are not being prosecuted. The only effective criminal remedy available was, in the case of Katsaris, the prosecution of the judicial officials involved. In this context. the State is claiming to the HRC that there is a pending criminal investigation by the Supreme Court Prosecutor for the offenses of abuse of authority and breach of duty, unbeknown to the petitioners and to GHM. In the case of the Georgopoulos family, the unlawful evictions occurred in 2006, less than five years before the publications of the Views; thus the consequent misdemeanors crimes were not time-barred. Hence effective criminal remedy included both the assignment of criminal liability to the perpetrators and the prosecution of the judicial officials involved. For both cases, Georgopoulos had filed criminal complaints, which were reopened after the Views. Concerning the complaint against the municipal officials, the domestic court acquitted the defendants municipal officials ruling that, whereas the demolition of the shacks was unlawful insofar as no relevant permit had been issued by the town planning office, the requisite subjective element (namely the specific intent, *dolus specialis*) of the offense could not be established as their intent was to satisfy the (implied) overriding priority of protection of public health and not to harm the Roma. In its reasoning it did not even include a reference to the HRC Views where these actions were found to be unlawful. In addition, there was no reference to the Supreme Court's case law declaring Views as *res judicata*, let alone a reasoning why it departed from that case law and reached a different conclusion. As for the complaint against the judicial officials who had failed to refer to trial the municipal officials responsible for the evictions of the authors, the latter's legal representative GHM was informed in November 2013 that the Prosecutor of the Supreme Court had decided to archive the complaint. GHM filed a request asking for a copy of that decision and the related court brief so as to inform the HRC. The Supreme Court Prosecutor's office subsequently informed GHM's Panayote Dimitras orally that the Prosecutor refused to give him the documents requested.

In all three cases, the HRC has ruled that Greece should offer adequate compensation to the authors. The State argued in the observations during the follow-up procedure that there is a

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[6] Council of Europe, Pending cases: current state of execution, available online: <http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=&StateCode=GRC&SectionCode=>.

[7] Human Rights Committee, *Andreas Kalamiotis v. Greece* (Comm. No. 1486/2006), UN Doc. CCPR/C/93/D/1486/2006, 24 July 2008.

[8] Human Rights Committee, *Antonios Georgopoulos and Chrysafo Georgopoulos v. Greece* (Comm. No. 1799/2008), UN Doc. CCPR/C/99/D/1799/2008, 29 July 2010.

[9] Human Rights Committee, *Nikolaos Katsaris v. Greece* (Comm. No. 1558/2007), UN Doc. CCPR/C/105/D/1558/2007, 18 July 2012.

[10] Our related submissions to the HRC as well as Greece's last answer are attached in the Annex.

domestic remedy for the authors to seek compensation. This is not an implementation of the HRC Views. The HRC did not rule that the State provides the authors with a remedy to seek compensation but to offer adequate compensation. Additionally, the procedure suggested by the State, a lawsuit for damages before administrative courts, is not suitable for awarding compensation to the authors. Such a procedure is intended for cases in which the liability of the state has first to be established. When liability is established, the State decides on adequate compensation through its Legal Council of State. Also, these administrative procedures underlie a five-year prescription. As the violations occurred in 1999, 2001 and 2006, a complaint would be inadmissible.

Informed of these and other cases of reluctance to implement ECtHR and UN HRC decisions, the UN CAT, in its 2012 concluding observations on Greece stated: "The Committee reiterates its concern at the insufficient information provided relating to redress, including fair and adequate compensation as well as rehabilitation, available to victims of torture and ill-treatment or their dependents, in accordance with article 14 of the Convention. The Committee is also concerned at the significant delays in offering redress to victims of violence which has been determined by international supervisory organs and courts (art. 14). The State party should strengthen its efforts in respect of redress, including compensation and the means for as full rehabilitation as possible, and develop a specific programme of assistance in respect of victims of torture and ill-treatment. The State party should also establish more efficient and accessible procedures to ensure that victims can exercise their right to compensation in accordance with Law 3811/2009, especially by reducing the time used by domestic courts to award damages in such cases. The Committee also recommends that the State party should without exception and as a matter of urgency offer prompt redress to victims of violence which has been determined by international supervisory organs and courts, such this Committee and the Human Rights Committee, as well as the European Court of Human Rights." [11]

Question: Please provide information on the implementation of decisions by international human rights bodies, including the provision of adequate compensation especially against the background that a re-opening of civil and administrative proceedings on the basis of a decision by an international body is impossible.

6. Insufficient Implementation of Concluding Recommendations

Greece's follow-up report is indicative of the lack of a systematic implementation of the Committee's concluding observations.[12] There does not seem to be any formal procedure on implementing recommendations. Although Greece made some improvements in the area of detention facilities, many issues addressed by the Committee's concluding observations remain of deep concern. The areas addressed in this report, especially violence against Roma, human trafficking and the situation in deportation centers, did not significantly improve since the country's last report.

Questions:

1. Please report whether there is a formal procedure or action plan on the implementation of the Committee's recommendations, including in the Hellenic Parliament.

2. Please also report if there is any process of public consultations with civil society organisations.

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[11] Committee against Torture, Concluding Observation on Greece, UN Doc. CAT/C/GRC/CO/5-6, 27 June 2012, para. 26.

[12] Committee against Torture, Follow-up State party's report, UN Doc. CAT/C/GRC/CO/5-6/Add.1, 5 June 2013.

7. Human Trafficking

Greece is a transit and destination country for women and children subjected to sex trafficking and for men, women, and children in forced labor. Victims are frequently forced into debt bondage in agriculture and construction. In addition, hundreds of children are subjected to forced labor, i.e. to sell goods on the street, beg, or commit petty theft. In 2013, there has been an increase in Roma children from Romania brought to Greece and forced to work.[13]

Trafficking in women remains especially alarming. Thus, CEDAW's concluding observation on Greece in 2013 identified trafficking in women as a core concern. CEDAW was especially concerned about the limited effort by the State party to address the root causes of trafficking and exploitation. In addition there is considerable stigmatization of prostitutes with HIV/AIDS by public blaming campaigns pointing out individuals.

Despite the National Action Plan to combat trafficking for 2010 – 2012 and despite its increased efforts, Greece does not fully comply with the minimum standards for the elimination of trafficking: trials continue to be lengthy (five years in average), fees for victims are high and there is a lack of interpretation services. Similar concerns exist with regard to the protection of victims of human trafficking. The services provided to victims, including health services and shelters are insufficient.[14]

In addition, the Committee's (and other UN Treaty Bodies)[15] repeated concern that 502 out of 661 Albanian Roma street children reportedly went missing following their placement during 1998-2002 in the Greek Aghia Varvara children's institution and that these cases have not been investigated by the relevant authorities. The government did not address this issue although an opposition Member of Parliament queried the government on the basis of CAT's recommendation in an oral question before Parliament on 19 September 2013.

Questions:

1. Please provide data on the implementation and effectiveness of the National Action Plan.

2. Please also provide information on the measures taken since 2012.

3. Please report on the measures taken in order to address the root causes of trafficking, including poverty and sexual exploitation of women.

4. Please provide information on the implementation of the Committee's recommendation urging the State party to engage with the Albanian authorities with a view to promptly creating an effective mechanism to investigate these cases in order to establish the whereabouts of the missing children, in cooperation with the Ombudsmen of both countries and relevant civil society organizations, and identify disciplinary and criminal responsibilities of those involved, before the passage of time creates difficulties in ascertaining the facts.

[13] United States Department of States, Trafficking in Persons Report 2013, available online: <http://www.state.gov/j/tip/rls/tiprpt/2013/>, p. 180.
[14] Ibid. pp. 180–181.
[15] See e.g. Committee on the Rights of the Child, Concluding Observation on Greece, UN Doc. CRC/C/GRC/CO/2-3, 13 August 2012, para. 66.

8. Annex

Submissions of GHM and OMCT to the Human Rights Committee in the case of *Antonios Georgopoulos and Chrysafo Georgopoulos v. Greece*, *Andreas Kalamiotis v. Greece* and *Nikolaos Katsaris v. Greece*

Greece Observation to the Human Rights Committee's Views

GREEK HELSINKI MONITOR (GHM)
Address: P.O. Box 60820, GR-15304 Glyka Nera
Telephone: (+30) 2103472259 Fax: (+30) 2106018760
e-mail: office@greekhelsinki.gr website: http://cm.greekhelsinki.gr

World Organisation Against Torture
8, rue du Vieux Billard
Case postale 21
1211 Geneva 8, Switzerland,
Tel: + 41 22 809 49 39 Telefax: +41 22 809 4929
e-mail: omct@omct.org website: www.omct.org

Mr. Ibrahim Salama
Director of the Human Rights and Treaties Division
Office of the United Nations High Commissioner for Human Rights
Palais des Nations
CH-1211 Genève 10 Switzerland

Sent by email to: petitions@ohchr.org

22 August 2013

Re: Antonios Georgopoulos and Chrysafo Georgopoulos v. Greece (No. 1799/2008) – Nikolaos Katsaris v. Greece (No. 1558/2007) - Andreas Kalamiotis v. Greece (No. 1486/2006)

Dear Mr Salama,

In view of several common elements in the follow-up to the Views on the three communications, we would like to offer the following joint comments on all three of them.

1. Introduction

GHM and **OMCT** have represented before the HRC authors **Nikolaos Katsaris** and **Andreas Kalamiotis. GHM** has represented before the HRC authors **Antonios Georgopoulos** and **Chrysafo Georgopoulos** and their children. **GHM** and **OMCT**, along

with other NGOs, submitted reports to the **CAT** before the latter's review of Greece in May 2012.[16]

2. Main HRC findings

On 24 July 2008, the **Human Rights Committee** (HRC) adopted its **"Views"** on Communication No. 1486/2006 (*Andreas Kalamiotis v. Greece*). The main points related to the follow-up procedure were:

"7.3 The Committee recalls its jurisprudence that complaints against maltreatment must be investigated promptly and impartially by competent authorities and that expedition and effectiveness are particularly important in the adjudication of cases involving allegations of torture and other forms of mistreatment (General comment No. 20: Article 7 (Prohibition of torture or other cruel, inhuman or degrading treatment or punishment), para. 14. See also Communication No. 1426/2005, Banda v. Sri Lanka, Views adopted on 26 October 2007, para. 7.4.). In view of the manner in which the author's complaint was investigated and decided, as described in the previous paragraph, the Committee is of the view that the requisite standard was not met in the present case. Accordingly, the Committee finds that the State party has violated article 2, paragraph 3 read together with article 7 of the Covenant. Having come to this conclusion the Committee does not consider it necessary to determine the issue of a possible violation of article 7 read on its own.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it reveal violations by the State party of article 2, paragraph 3 read together with article 7 of the Covenant.

9. In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide the author with an effective remedy and appropriate reparation. The State party is also under an obligation to take measures to prevent similar violations in the future."

On 29 July 2010, the **Human Rights Committee** (HRC) adopted its **"Views"** on Communication No. 1799/2008 (*Antonios Georgopoulos and Chrysafo Georgopoulos v. Greece*). The main points related to the follow-up procedure were:

"7.3. The Committee considers that the authors' allegations, also corroborated by photographic evidence, claiming arbitrary and unlawful eviction and demolition of their home with significant impact on the authors' family life and infringement on their rights to enjoy their way of life as a minority, have been sufficiently established. For these reasons, the Committee concludes that the demolition of the authors' shed and the prevention of construction of a new home in the Roma Riganokampos settlement amount to a violation of articles 17, 23 and 27 read alone and in conjunction with article 2, paragraph 3, of the Covenant. (…)

[16] All available through this link: http://www.omct.org/monitoring-protection-mechanisms/reports-and-publications/greece/2012/04/d21757/

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, as well as reparations to include compensation. The State party is under an obligation to ensure that similar violations do not occur in the future."

On 18 July 2012, the **Human Rights Committee** (HRC) adopted its **"Views"** on Communication No. 1558/2007 (*Nikolaos Katsaris v. Greece*). The main points related to the follow-up procedure were:

"10.7 In the light of the multiple, unexplained and serious shortcomings of the preliminary investigations, including (a) the fact that the authors complaint of 27 October 1999 was ignored by the Prosecutor of First Instance in her ruling of 10 October 2001 of the second investigation, the same instance which was investigating that very complaint; (b) the absence of any forensic medical examination; (c) the discrepancies with regard to the arresting officers which cast doubts on the thoroughness and impartiality of the investigations; (d) the alleged use of discriminatory language by investigating authorities to refer to the author or his way of life; and (e) the length of the preliminary investigations, the Committee concludes that the State party has failed in its duty to promptly, thoroughly and impartially investigate the author's claims and therefore finds a violation of the State part's obligations under article 2, paragraph 3, read in conjunction with article 7; and articles 2, paragraph 1, and 26 of the Covenant.

10.8 The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of the rights of Nikolaos Katsaris under article 2, paragraph 3, read in conjunction with article 7; and articles 2, paragraph 1, and 26, of the Covenant.

11. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including adequate compensation. The State party is also under an obligation to prevent similar violations in the future."

In all three communications therefore, the State was asked to provide the authors with an effective remedy including adequate compensation.

In the cases of Katsaris and Kalamiotis, police actions that had led to the violations had occurred more than five years before the publication of the views (in 1999 and 2001 respectively); thus, the consequent misdemeanors crimes had become time-barred. Hence the perpetrators of these police actions are not being prosecuted. The only effective remedy available is adequate compensation to the victims and, in the case of Katsaris, the prosecution of the judicial officials involved.

In the case of the Georgopoulos family, the unlawful evictions occurred in 2006, less than five years before the publications of the views; thus the consequent misdemeanors crimes were not time-barred. Hence effective remedy includes both the assignment of criminal

liability to the perpetrators and adequate compensation to the victims, as well as the prosecution of the judicial officials involved.

In the three cases, the State party is also under an obligation to ensure that similar violations do not occur in the future.

3. Committee against Torture recommendation

On 1 June 2012, the **Committee against Torture** issued its Concluding Observations after the review of Greece. A recommendation on redress, including compensation and rehabilitation available to victims of torture and ill-treatment relevant to the present submission was included:

"Committee against Torture

Forty-eighth session

7 May–1 June 2012

Consideration of reports submitted by States parties under article 19 of the Convention

http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.GRC.CO.5-6.doc

Concluding observations of the Committee against Torture: Greece

(...)

Redress, including compensation and rehabilitation

26. The Committee reiterates its concern at the insufficient information provided relating to redress, including fair and adequate compensation as well as rehabilitation, available to victims of torture and ill-treatment or their dependants, in accordance with article 14 of the Convention. The Committee is also concerned at the significant delays in offering redress to victims of violence which has been determined by international supervisory organs and courts (art. 14).

The State party should strengthen its efforts in respect of redress, including compensation and the means for as full rehabilitation as possible, and develop a specific programme of assistance in respect of victims of torture and ill-treatment. The State party should also establish more efficient and accessible procedures to ensure that victims can exercise their right to compensation in accordance with Law 3811/2009, especially by reducing the time used by domestic courts to award damages in such cases. The Committee also recommends that the State party should without exception and as a matter of urgency offer prompt redress to victims of violence which has been determined by international supervisory organs and courts, such this Committee and the Human Rights Committee, as well as the European Court of Human Rights."

4. Summary and recommendations

In all three cases, the State has insisted that it has fulfilled its obligations to undertake all necessary measures giving effect to the Views. GHM and OMCT will once again summarily document below that on the contrary it is clear that Greece refused to offer an effective criminal remedy in the Georgopoulos case (not respecting even the *res judicata*), adequate compensation to the authors in all three cases, as well as sanctions to the judicial officials whose actions or failures led to the violations cited in the Views in the cases of Katsaris and Georgopoulos. The State party has also failed to take measures to prevent similar violations.

GHM and OMCT therefore urge the HRC to examine the follow up to the Views in these three cases, also taking into consideration the CAT recommendation, so as to:

- **find that Greece has not implemented the recommendations**
- **issue a recommendation that Greece must as a matter of urgency:**
  - **offer adequate compensation to the authors without asking them to file civil suits before domestic courts as the State's liability has been established;**
  - **review in cassation the judgment in the Georgopoulos case that failed to take into consideration the *res judicata* so that no future occurrences are possible and/or take disciplinary action against the judges who ignored the *res judicata* in violation even of domestic case law; as well as**
  - **sanction the prosecutors involved in the Katsaris and the Georgopoulos cases.**

The HRC is also requested to include a reference to and reaffirmation of the aforementioned related excerpt from the "Concluding observations of the Committee against Torture: Greece", and to ask the State party to take measures to guarantee non-repetition.

5. Provision of criminal effective remedy to the Georgopoulos family

The authors in Georgopoulos recall that the State on 9 March 2011 argued that since the domestic criminal investigation was completed with **Patras Appeals Prosecutor** Decrees 44/2009 and 56/2009 rejecting the allegations on the Georgopoulos family (and other Roma's) unlawful eviction, it had complied with the requirement for the provision of an effective remedy. The State argued that this was an obligation of means and not of a result. Therefore the State implied that the different conclusion of that investigation from that of the Views did not oblige the State to reopen the domestic criminal investigation. GHM subsequently argued that by such position the State indicated once more its reluctance to execute international (quasi-)judicial bodies' judgments, decisions or views.

Subsequently the authors of the communication through GHM took the initiative to have the case reopened, a motion that was accepted by the Prosecutor of the Supreme Court.

Hence, only because of an action by the authors was such a criminal remedy provided anew. The ensuing trial was held before the Three-Member Misdemeanors' Court of Patras on 19 and 22 November, 3 and 11 December 2012: it ended with an acquittal of the defendant mayor and deputy mayors of Patras.

The State claimed in its Observations dated 22 March 2013 that the *res judicata* rule did not cover the penal responsibility of persons facing criminal charges. However, the State also argued that, according to Court of Cassation case law, the findings in European Court of Human Rights (ECtHR) judgments (and by analogy in HRC Views) do consist a *res judicata* that can be invoked before the domestic courts. In effect, the Court of Cassation has ruled that *"the ECtHR judgment is a res judicata… on whether the action was unlawful or not."* This is why the domestic court in the instant case should have ruled that the multiple unlawful eviction and demolition of the authors' home was unlawful; then, since this unlawful act was carried out by the Municipality of Patras, according to Greek law those who can be held criminally liable are the Mayor and the Deputy Mayors who were found to have ordered the evictions. In its Observations dated 11 June 2013, the State argued again that *"the outcome of the penal case is irrelevant."* For Greece, it seems that the obligation ends with the formal provision of a remedy (which in any case was not provided on the initiative of the State) which does not have to be an effective remedy (in this case honor the *res judicata* and punish the perpetrators).

The authors are attaching here the official minutes and judgment from that trial in Greek (Exhibit 1) published on 27 June 2013 and a translation of the cover page as well as of pages 33-39 in the end of the document with the crucial reasoning of the court as well as the initial charges against the defendants. The authors consider this document self-explanatory and telling of how the State once again did not implement the HRC Views, as the judges ignored the *res judicata* (that the demolition of the authors' home was unlawful since it inter alia violated the ICCPR) as well as the Supreme Court's binding interpretation of *res judicata* which was read in full by the court during the trial. The most important excerpts are (emphasis added):

> *"(…) The first defendant Andreas Karavolas, in his capacity as Mayor of Patras, together with the second defendant, Nikolaos Kouremenos, Deputy Mayor of Patras and responsible for the city's cleaning services, ordered municipal crews to carry out cleaning operations in these two settlements and in particular on 27-7-2006 in the settlement in the area of "Makrigianni" and for the period between 24-8-2006 until 15-9-2006 in the area of "Riganokampos". In addition to the cleaning operations that were carried out in the two aforementioned settlements, following orders to that effect by the two defendants,* ***the crews of the Municipality of Patras also tore down some makeshift homes (shacks) which were not inhabited by any Roma; the two defendants however did not have the competence to order such an action since the demolition of dwelling built without a planning permission, in accordance with the applicable legal procedure, falls within the competence of the Town Planning Office (see Presidential Decree 267 dated 2/21-8-1998)****(…) Similarly, regarding the tearing down of some makeshift homes in the area of "Riganokampos", it was established that in the period from 24-8-2006 to 15-9-2006 only some and not all of the Roma makeshift homes were demolished.* ***Among those that were demolished was the makeshift home of the the two civil claimants who are a couple, namely Antonis Georgopoulos, son of Georgios, and Chrysafo***

Georgopoulou*. The two civil claimants were not present at the settlement during the material time period. As soon as they returned to Patras, they visited the Social Assistance Directorate of the Municipality of Patras in order to complain. There they were informed that they should look for an apartment to rent, that the municipality would provide them with a rent subsidy and were granted 200 euros as compensation for the destruction of their house. Both of them continued to live in a shack belonging to a relative, located in the "Riganokampos" settlement and which had not been demolished.* ***Then in September 2006, illegally and without being entitled to do so, they attempted to erect a new shack in the same settlement. They were stopped however by police officials who visited the area on 26-9-2006 and obliged them to stop the erection of a new shack. The Georgopoulos couple agreed and consented for the building material to be removed by a construction vehicle [bulldozer] that had arrived at the scene*** *(see document issued by the Achaia Police Directorate, ref. no. 4808/4/13-ρα/9-9-2008). On the basis of the above mentioned facts, the Court considers that* ***the defendants committed the impugned acts without having as their objective to harm the Roma families or to illegally benefit the residents of the areas that complained about the presence of Roma, but rather to the benefit of public health that encompasses also the aggrieved Roma.*** *Nor was there any evidence adduced to the effect that by by evicting the Roma from their makeshift homes and harming them in that way, , they had the objective of frustrating the right to housing that is enshrined in the constitution and is applicable to all with no discrimination.."*

The domestic court ruled that the authors lived lawfully in the area and that there was a demolition of the authors' home (twice) by municipal employees upon the orders of the defendants Mayor and Deputy Mayor of Patras (who had the competence to give such orders). By its holding, the court hadpractically overruled the initial conclusion of the Patras Appeals Prosecutor that there was absolutely no basis on which to base a referral to trial The court also ruled that the municipal employees had in any case no authority to carry out such demolitions which were thus carried out in violation of domestic legislation. However, because of the nature of the offence which requires not only that the defendant acted with intent (e.g. with malice aforethought) but also that he was acting with the express purpose to bring about a specific outcome,[17] the domestic court acquitted the defendants because their objective according to the court was to satisfy the (implied) overriding priority of protection of public health – without however elaborating on how the eviction, without effective provision of alternative accommodation either immediately after the evictions[18] or even to date (it is reminded that, as the domestic

[17] In other words, two kinds of intent are required for such an offence to be consummated; in addition to the requisite *mens rea* of the offence, the prosecution has to prove that the defendant committed the offence in order to further an outcome / purpose specified by law: the latter kind of intent is called in Greek *"subjective element of the unlawful act" (υποκειμενικό στοιχείο αδίκου)*. Offences with such a double subjective element are called *"offences with an overflowing subjective element" (εγκλήματα υπερχειλούς υποκειμενικής υπόστασης).*

[18] Contrary to the case of the Basilaris family referred to in the judgment, neither the court found nor the state has argued that at the material times that their evictions took place, the authors had a viable and effective alternative accommodation solution. Indeed, the second eviction was a direct result of the state's failure to provide them with such

court ascertained, the authors are still living in the settlement), could remedy the undoubtedly grave violations of the sanitary and town planning regulations.[19] GHM and OMCT would like to note that this is at least the third domestic judicial system decision in recent years that the demolition of Roma homes without following proper procedures is not unlawful as the aim is to protect public health. GHM and OMCT find particularly problematic the deeply flawed circular reasoning of the domestic court which effectively condones the defendants attested, even by the domestic court, to be law-breaking. At the very least, the above should serve as proof that either the domestic legislative framework is neither adequate nor effective in protecting Roma from unlawful and illegal evictions, or that if it is adequate it is not applied by the courts which have never convicted a municipal official for a Roma eviction.

The HRC concluded that *"the demolition of the authors' shed and the prevention of construction of a new home in the Roma Riganokampos settlement amount to a violation of articles 17, 23 and 27 read alone and in conjunction with article 2, paragraph 3, of the Covenant."* The Court of Cassation has ruled that *"the ECtHR judgment is a res judicata… on whether the action was unlawful or not:"* this implies that the action of the demolition of the authors' home has to be ruled as unlawful. The domestic court however ruled that the action found by the HRC as unlawful which, according to the Supreme Court, obliged it to also find that it was unlawful and thus proceed to convict those responsible for it, was lawful. In its reasoning it did not even include a reference to the HRC Views (although the whole text was read by the court during the trial) and/or to the Supreme Court case law with some reasoning why it departed from the case law and reached a different conclusion.

In their 23 April 2013 comments, the authors stated that, with the judgment to acquit, as the lawyer of the Municipality of Patras Vassilis Zorbas stated in a statement to the press, the Municipality of Patras (which is an agent of the State) considered that *"Greece was acquitted of a serious charge that it is a racist country … The judgment is a vindication not only of the Mayor and the former Deputy Mayors but also of Patras and Greece."* They rightly claimed that the domestic judgment has overturned the *res judicata* and the content of the HRC Views. The HRC Views were manifestly not implemented; in fact they were totally ignored and scorned.

6. Prosecution of judicial officials in the Katsaris and Georgopoulos cases

The author in Katsaris argued that the State must seek the remedy of prosecution for abuse of authority (Article 239 Criminal Code) of the prosecutors who failed to press charges at the time, and were thus responsible for the –in the words of the State- *"non*

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accommodation in the wake of their first eviction, thereby forcing the authors to remain in the settlement.

[19] See Yordanova et al v. Bulgaria, no. 25446/06, judgment of 24 April 2012, paragraph 124: *"The Court further observes that it is undisputed that the houses of most applicants do not meet basic sanitary and building requirements, which entails safety and health concerns. It considers, however, that in the absence of proof that alternative methods of dealing with these risks have been studied seriously by the relevant authorities, the Government's assertion that the applicants' removal is the appropriate solution is weakened and cannot in itself serve to justify the removal order."*

assiduous examination" of the author's complaints and for the *"delinquencies of the preliminary investigation"* which caused the violations found by the HRC in its Views. The Legal Council of the State in Greece's observations on the author's claim was to substitute for the competent court authorities (in this case the Prosecutor of the Supreme Court) and declare that there was no ground for such prosecution as the prosecutors involved did not have *"a specified purpose to fail to press charges against a libel person."* The author believes that in effect there was such a purpose: to protect the police officers involved in the abuses and to discriminate against the author on the basis of his ethnic Roma identity (to quote from the Views: *"use of discriminatory language by investigating authorities to refer to the author or his way of life"*).

The authors in the Georgopoulos case would like to recall that in 2009 they had filed a complaint for abuse of authority against **Patras Misdemeanors Prosecutor Panayota Varsamou** who had initially archived their complaint for the evictions. At the time the complaint was examined improperly by a local prosecutor (instead of the Prosecutor of the Supreme Court) and was summarily archived as well. After the HRC Views were issued and the referral of Patras municipal officials to trial was decided, GHM, on 20 July 2011, applied to the **Prosecutor of the Supreme Court** requesting that the court brief be withdrawn from the archives and an examination of charges of abuse of authority and breach of duty allegedly committed by **Patras Misdemeanors Prosecutor Panayota Varsamou, Patras Appelas Prosecutors Evangelos Kassalias and Vassileios Papadas,** as well as **Amaliada Misdemeanors Prosecutor Eirini Tziva** (the latter three involved in the improper investigation and archiving of the initial complaint) be investigated by the **Prosecutor of the Supreme Court**. The request was formally accepted and a criminal investigation has been carried out by **Deputy Supreme Court Prosecutor Roussos Papadakis** replaced in mid-2012 by **Deputy Supreme Court Prosecutor Georgios Hatzikos** also recently replaced by **Deputy Supreme Court Prosecutor Constantinos Paraskevaidis**. The authors attach the request for reopening of the criminal investigation (in Greek – Exhibit 3) to assist the State as details about those procedures are included therein.

The authors recall that in the case before the ECtHR no 29321/13 Panagiotis Kontalexis vs. Greece, the complainant alleges an additional violation of the European Convention on Human Rights since the Greek Courts had refused to implement an ECtHR judgment by reopening the domestic procedures as ordered by the European Court.[20] This shows the lack of will of the State party to implement the judgments and decisions of the international judicial and quasi-judicial mechanisms.

7. Provision with reparation including compensation

In the Georgopoulos case, Greece's **Legal Council of the State** (NSK) examined in its (quasi-)judicial function the issue of a settlement for adequate compensation to the victims based on the liability established by the Views after an application submitted by the latter at the suggestion of the NSK. It concluded that the actionable claim should be addressed to the Municipality of Patras which was the actor of the violations. GHM has argued that the HRC found violations by the State and not by the local agency and hence it is the State that is liable for awarding compensation. This has been the practice of the ECtHR in its

[20] http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-122553

judgments. The only difference between ECtHR judgments and HRC Views is that in the former the exact sum of the compensation is specified while in the latter there is an award of compensation but without specification of the exact sum with only the mention that it must be adequate.

In the Katsaris and Kalamiotis cases however, the actor of the violations was the Hellenic Police, an agency of the central government. Hence the NSK has the competence to decide on settlements for adequate compensation to the victims. To date the State has refused to do so. Instead it repeats that the authors should file lawsuits for compensation before administrative courts. Yet it has failed to effectively respond to the authors' argument that trials before administrative courts (which will not lead to final judgments before the 2020's) are necessary only when both liability and compensation need be decided; when only compensation is to be decided the authors have argued –and provided evidence from similar cases- that the NSK can take such decisions. The authors here repeat that the only difference between ECtHR judgments and HRC Views is that in the former the exact sum of the compensation is specified while in the latter there is an award of compensation but without specification of the exact sum with only the mention that it must be adequate.

For these reasons, the authors suggest that the Human Rights Committee urges the State party to follow the example of the compensation agreement between the State party and the author during the implementation of the Human Rights Committee's Views in the case Bodrozic v. Serbia and Montenegro, Communication Nº 1180/2003 and seek compensation agreements with the authors in the three cases for which provision of compensation is still pending.

The authors agree with the State on one point. Since arguments about this point have been exchanged several times between the State and the authors, the HRC is requested to decide on the issue. However, the authors will not call on the HRC not to take into account any further submissions by the State, as the State asked the HRC to do for GHM further submissions, which, the authors note, were asked by the HRC. The State's suggestion that the HRC should not take into consideration GHM submissions asked by the HRC is an additional indication of the lack of the necessary respect of the HRC by the State.

Yours sincerely,

Panayote Elias Dimitras
Executive Director, GHM

Gerald Staberock
Secretary General, OMCT

GREEK HELSINKI MONITOR (GHM)
Address: P.O. Box 60820, GR-15304 Glyka Nera
Telephone: (+30) 2103472259 Fax: (+30) 2106018760
e-mail: office@greekhelsinki.gr website: http://cm.greekhelsinki.gr

Mr. Ibrahim Salama
Director of the Human Rights and Treaties Division
Office of the United Nations High Commissioner for Human Rights
Palais des Nations
CH-1211 Genève 10 Switzerland

Sent by email to: petitions@ohchr.org

6 January 2014

Re: Antonios Georgopoulos and Chrysafo Georgopoulos v. Greece (No. 1799/2008) – Nikolaos Katsaris v. Greece (No. 1558/2007) - Andreas Kalamiotis v. Greece (No. 1486/2006)

Dear Mr Salama,

On 22 October 2013, Greece submitted their observations on the authors' comments dated 22 August 2013 on the follow-up to the aforementioned three communications. We would like to offer the following additional comments.

8. Main HRC findings

In all three Views, the HRC concluded that *"In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, as well as reparations to include compensation."*

9. Provision of effective criminal remedy

In the cases of Katsaris and Kalamiotis, police actions that had led to the violations had occurred more than five years before the publication of the views (in 1999 and 2001 respectively); thus, the consequent misdemeanors crimes had become time-barred. Hence the perpetrators of these police actions are not being prosecuted.

The only effective criminal remedy available is, in the case of Katsaris, the prosecution of the judicial officials involved. For the first time, in its recent observations, the State refers to a pending criminal investigation by the Supreme Court Prosecutor for the offenses of abuse of authority and breach of duty. Author Katsaris welcomes this development which was probably the result of State action as he did not initiate such action, nor has he been called by the Supreme Court Prosecutor to testify. The Author is looking forward to further information on this development.

In the case of the Georgopoulos family, the unlawful evictions occurred in 2006, less than five years before the publications of the views; thus the consequent misdemeanors crimes were not time-barred. Hence effective criminal remedy included both the assignment of criminal liability to the perpetrators and the prosecution of the judicial officials involved. For both cases, Authors Georgopoulos had filed criminal complaints.

The outcome of the complaint against the municipal officials was presented at length in the Authors' previous comments to the HRC. The domestic court acquitted the defendants ruling that, whereas the demolition of the shacks was unlawful insofar as no relevant permit had been issued by the town planning office, the requisite subjective element (namely the specific intent, *dolus specialis*) of the offense was not made out as their intent was to satisfy the (implied) overriding priority of protection of public health and not to harm the Roma.[21] In its reasoning it did not even include a reference to the HRC Views where these actions we found to be unlawful. Nor was there any reference to the Supreme Court case law that the Views consist a *res judicata*, let alone some reasoning why it departed from that case law and reached a different conclusion.[22] Addressing these comments, the State argued that "the effectiveness of a remedy does not depend on the certainty of a favorable outcome for the applicant." The Authors agree with that argument adding that it does not concern their comment. The Authors argue that the effectiveness of a remedy does depend on an outcome based on existing legislation and most importantly consistent with the *res judicata* of a "higher court" like the HRC. The latter had in fact ruled that the action of bulldozing Roma homes was a willful unlawful eviction aiming at, and succeeding in, harming the Roma victims.[23]

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[21] The Authors cannot overemphasize the practical implications of such a line of reasoning: evictions of Roma can take place with impunity, provided that the perpetrators have the presence of mind not to voice their anti-Roma prejudices and claim that they did not intent to cause any harm to the Roma, but were for example protecting public health.

[22] See by analogy the European Court of Human Rights judgment in the case of *Emre c. Suisse* (No. 2), app. no. 5056/10, paragraphs 71 - 72: *"A la lumière des principes susmentionnés, la Cour estime que le Tribunal fédéral disposait d'une certaine marge d'appréciation dans l'interprétation de l'arrêt de la Cour. Toutefois, force est de constater qu'il a en l'espèce substitué l'interprétation faite par la Cour par sa propre interprétation. A supposer même qu'une telle manière de procéder soit admissible et justifiée au regard de la Convention, il faudrait encore que la nouvelle appréciation par le Tribunal fédéral des arguments exposés par la Cour dans son premier arrêt soit complète et convaincante. A cet égard, la Cour se réfère au raisonnement extrêmement détaillé de son premier arrêt, y compris la pesée concrète des différents intérêts en jeu (paragraphes 72-86) qui englobe l'examen de multiples éléments, à savoir la nature des infractions commises par le requérant, la gravité des sanctions prononcées, la durée du séjour du requérant en Suisse, le temps écoulé entre la perpétration des infractions et la mesure litigieuse, la conduite de l'intéressé durant cette période, la solidité de ses liens sociaux, culturels et familiaux avec le pays hôte et avec le pays de destination, les particularités de l'espèce, à savoir les problèmes de santé du requérant, et enfin le caractère définitif de la mesure d'éloignement. La Cour observe que les considérations du Tribunal fédéral se limitent à ce dernier élément. Elle estime que, pour satisfaire aux obligations strictes qui incombent aux Etats en vertu de l'article 46 de la Convention, l'examen aurait au contraire dû porter sur l'ensemble de ces arguments."*

[23] Incidentally, the State has translated erroneously "δεδικασμένο" (which means "res judicata" as correctly translated in line 3) into "precedent" (in line 9) in Supreme Court

As for the complaint against the judicial officials who had failed to refer to trial the municipal officials responsible for the evictions of the Authors, the latter's legal representative Greek Helsinki Monitor (GHM) was informed in November 2013 that the Prosecutor of the Supreme Court had decided to archive the complaint. GHM filed a request registered by the latter's office with protocol number 8340/14-11-2013 asking for a copy of that decision and the related court brief (number ΕΠ 74/13) so as to inform the HRC (appending the HRC letters to GHM). The Supreme Court Prosecutor's office subsequently informed GHM's Panayote Dimitras orally that the Prosecutor refused to give him the documents requested. GHM asked for a written confirmation which was not given by 30 December 2013 when GHM last visited his office. So the Authors will have to consider the archiving as arbitrary and lacking reasoning. They hope though that the State will get a copy of the decision and submit it to the HRC. GHM would like the HRC to know that this is the first time ever that such a request is refused by the Supreme Court Prosecutor: in all previous complaints against judicial officials such request were always granted.

10. Provision of reparation including compensation

The HRC has ruled that Greece should offer adequate compensation to the Authors. The State has repeatedly argued in the observations during the follow-up procedure that there is a domestic remedy for the Authors to seek compensation. This is not an implementation of the HRC Views. The Authors respectfully believe that if the distinguished members of the HRC would have wanted the State to provide the Authors with a remedy to seek compensation that would have so phrased their decision, rather than asking the State to offer adequate compensation as they have done in all three Views.

Additionally, the Authors have stated that the procedure suggested by the State, a lawsuit for damages before administrative courts, is not the proper one for awarding compensation to the Authors. Such lawsuit is necessary when there is a need to first establish State liability and then decide on the awarding of compensation. When liability is established the State decides on adequate compensation through its Legal Council of State.

The Authors have also stated that for the procedure invoked by the State, there is anyway a five-year prescription. As the violations occurred in 1999, 2001 and 2006, a lawsuit would be thrown out as inadmissible.

Finally, even if all that did not hold, the Authors have stated that in all these lawsuits there is an excessive length of procedure, with final judgments not expected before the 2020's for lawsuits filed in early 2010's assuming they would have found admissible. These arguments have been repeated by the Authors time and again and it is noteworthy that the State even in its recent observations failed to address them, effectively refusing to grant compensation.

For these reasons, the Authors suggest again that the Human Rights Committee urges the State party to follow the example of the compensation agreement between the State party

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judgment 818/2008 (paragraph 10). In any case, the argument refers to domestic judgments that cannot be annulled by subsequent ECtHR judgments which is irrelevant to the present case, where the domestic first instance judgment was subsequent to the HRC Views.

and the author during the implementation of the Human Rights Committee's Views in the case *Bodrozic v. Serbia* and Montenegro, Communication Nº 1180/2003 and seek compensation agreements with the authors in the three cases for which provision of compensation is still pending.

11.Summary and recommendations

In all three cases, the State has insisted that it has fulfilled its obligations to undertake all necessary measures giving effect to the Views. GHM has once again documented that on the contrary it is clear that Greece refused to offer an effective criminal remedy in the Georgopoulos case (not respecting even the *res judicata*), adequate compensation to the authors in all three cases, as well as sanctions to the judicial officials whose actions or failures led to the violations cited in the Views in the cases of Katsaris and Georgopoulos.

The State party has also failed to take measures to prevent similar violations.

GHM therefore urges the HRC to examine the follow up to the Views in these three cases, taking into consideration the related CAT recommendation quoted in previous comments, so as to:

- **find that Greece has not implemented the recommendations**
- **issue a recommendation that Greece must as a matter of urgency:**
  - **offer adequate compensation to the authors without asking them to file civil suits before domestic courts as the State's liability has been established;**
  - **review in cassation the judgment in the Georgopoulos case that failed to take into consideration the *res judicata* so that no future occurrences are possible and/or take disciplinary action against the judges who ignored the *res judicata* in violation even of domestic case law; as well as**
  - **sanction the prosecutors involved in the Katsaris and the Georgopoulos cases.**

The HRC is also requested to include a reference to and reaffirmation of the aforementioned related excerpt from the "Concluding observations of the Committee against Torture: Greece", and to ask the State party to take measures to guarantee non-repetition.

Yours sincerely,

Panayote Elias Dimitras
Executive Director, GHM

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HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND
www.ohchr.org • TEL: +41 22 917 9341 • FAX: +41 22 917 9022• E-MAIL: petitions@ohchr.org

REFERENCE: G/SO 215/51 GRC (5) Follow-up
CE/YH/jl 1486/2006

24 October 2013

Dear Mr. Wavre and Mr. Dimitras,

I have the honour to refer to the follow-up procedure to communications considered by the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights and to transmit to you herewith, a copy of the State Party's observations dated 22 October 2013, concerning communication No. 1486/2006, which you submitted to the Human Rights Committee for consideration under the Optional Protocol to the International Covenant on Civil and Political Rights, on behalf of Mr. Andreas Kalamiotis.

Any comments which you may wish to make on the State party's submission should reach the Committee in care of the Office of the High Commissioner for Human Rights, United Nations at Geneva, not later than 25 November 2013.

Yours sincerely,

Ibrahim Salama
Director
Human Rights and Treaties Division

Mr. Rolin Wavre
World Organization Against Torture (OMCT)
8, rue du Vieux-Billard
Case Postale 21
1211 Geneva
Switzerland

Mr. Panayote Elias Dimitras
Greek Helsinki Motor
P.O. Box 60820
15304 Glyka Nera
Greece

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PERMANENT MISSION OF GREECE
GENEVA

Ref. No. 6172.1/51/AS 1695

NOTE VERBALE

The Permanent Mission of Greece to the United Nations Office at Geneva and other International Organizations in Switzerland presents its compliments to the Office of the High Commissioner for Human Rights and, with reference to the latter's Note Verbale G/SO 215/51 GRC(10) Follow-up/ 1486/2006, 1558/2007, 1799/2008, dated 24th September 2013, with regard to the follow-up procedure to communications considered by the Human Rights Committee (communication No. 1486/2006, 1558/2007, 1799/2008), has the honour to forward the observations on the counsel's submission, provided by the Greek Government.

The Permanent Mission of Greece to the United Nations Office at Geneva and other International Organizations in Switzerland avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, October 22, 2013

To: **The Office of the High Commissioner for Human Rights**
Palais des Nations, CH-1211 Geneva 10, Switzerland
Fax: +41 22 917 90 22

BEFORE

THE HUMAN RIGHTS COMMITTEE

OBSERVATIONS

OF THE HELLENIC GOVERNMENT

ON THE JOINT COMMENTS ON

COMMUNICATIONS No 1799/2008, 1558/2007

1486/2006

Submitted by: Antonios Georgopulos, Nikolaos Katsaris

and Andreas Kalamiotis

AFTER THE ADOPTION OF VIEWS OF 29 July 2010, 18 July 2012, 24 July 2008

Respectively

1. The requirement of introducing an effective domestic remedy according to the ECHR and the HRC concept

A.1. As the European Court of Human Rights has held on many occasions, Article 13 of the European Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (see, among many other authorities, the Kaya judgement cited above).

2. The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint; however, the remedy required by Article 13 must be "effective" in practice as well as in law (see, for example, Olhan v. Turkey [GC], no. 22277/93,§ 97, ECHR 2000-VII).

3. The "effectiveness" of a "remedy" within the meaning of Article 13 does not ***depend on the certainty of a favourable outcome for the applicant***. Nor does the "authority" referred to in that provision necessarily have to be a judicial authority; but if it is not, its powers and the guarantees which it affords are relevant in determining whether the remedy before it is effective. Also, even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so (see, among many other authorities, the Silver and Others v. the United Kingdom judgement of 25 March 1983, Series A no. 61, p. 42,§ 113, and the Chahal v. the United Kingdom judgement of 15 November 1996, Reports 1996-V, pp. 1869-70,§ 145).

4. Article 2, paragraph 3, requires that States Parties make reparation to individuals whose Covenant rights have been violated. Without reparation to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy, which is central to the efficacy of article 2, paragraph 3, is not discharged. In addition to the explicit reparation required by articles 9, paragraph 5, and 14, paragraph 6, the Committee considers that the Covenant generally entails appropriate compensation. ***The Committee notes that, where appropriate, reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations.***

5. In general, the purposes of the Covenant would be defeated without an obligation integral to article 2 to take measures to prevent a recurrence of a violation of the Covenant. Accordingly, it has been a frequent practice of the Committee in cases under the Optional Protocol to include in its Views the need for measures, beyond a victim-specific remedy, to be taken to avoid recurrence of the type of violation in question. Such measures may require changes in the State Party's laws or practices.

6. So introducing an effective domestic remedy includes measures for the effective implementation of the Covenant's provisions and the HRC findings meaning that if the required reparation involves restitution as bringing to justice perpetrators of human rights violation, the obligation under the Covenant is met as the result is allready there, not depending on ***the certainty of a favourable outcome for the author.*** The meaning of an effective domestic legal remedy can in no way be interpreted as the legal instrument of substituting the judgment of the domestic judge (penal, civil or administrative). Any other interpretation runs counter to the subsidiary nature of the Views or judgments of international bodies such as the HCR and the ECHR.

B. Implementation of the aforementioned principles in the instant case.

7. In all three cases the State was asked to provide the authors with an effective remedy including adequate compensation. In all three cases the adequate compensation could be sought from the authors by addressing the competent administrative Tribunal through an action for compensation according to the provision of article 105 of the Introductory Law of the Civil Code.

8. In that case the peprpetrators were brought before justice. In fact the defendants was the Mayor of Patras and the Deputy Mayor of Patras responsible for the city cleaning services. The penal tribunal (First Instance Court of Patras - Decision 3966/ 2012) found as the HRC Views did that the action of the demolition of the authors shed was unlawful, since the two defendants did not have the competance to order the demolition of the dwellings built without a planning permission. In fact the demolition order fell within the competance of the Town Planning Office (PD

267/2/21-8-1998). What was missing was the subjective element of the offence which was absent[1].

9. The penal tribunal actually examined the subjective aspects of the defendants will to harm the authors before deciding on their penal liability. This is a precondition before establishing the responsibility for the offence of breaching the service duty which state officials are under pursuant to articles 13 and 263 of the Criminal Code. It is evident that these aspects of the penal responsibility are not examined by the HRC and in that sence the "res judicata" stemming from the Views is by far nowhere binding on the State's international obligations. On the contrary bringing them to justice exhausts the State's international obligation under the provisions of the Covenant.

10. If restitutio in integrum is not (fully) possible, then compensation is due, according to the provisions of Articles 46 and 41 of the ECHR. The judgment of the Court is a *res judicata* ***between the parties in relation to the subject of the action on which the ECtHR ruled***. So if the application has been accepted (wholly or partly) the applicant may rely on the decision before any court of the State party and require its implementation. Of course, the ECtHR is not a revisionist or cassation court and has no power to annul or set aside the decision of the national court, which amounted to a breach of the right of the applicant or had incorrectly held that no individual right was affected. The consequence is that the precedent of the decision of the national court will not be overturned by the decision of the ECtHR for violation of fundamental rights of the applicant. If the unlawful situation, which was considered by the ECtHR as contrary to the Convention, remains, in cases where the infringement of the fundamental rights of the applicant is continuous, then the national judge, upon the applicant's request, is obliged to disrupt, for the future, the consequences of the domestic decision (*Court of Cassation 818/2008*).

11. In cases where the EctHR has found a violation of the applicant's rights and the domestic law provides for the possibility to call on the liability of the State, when the violation found amounts to a damage for which the State is responsible, the applicant acting in accordance with the provisions of Introductory Civil Law (Articles 104, 105), is well in place to sue for civil damages against the State. Further on the

[1] *i.e the knowledge and intent to breach their duty in order to harm the Roma and confer an illegal benefit on non Roma residents.*

issue concerning the irrevocable and res judicata judgments of Greek courts which are contrary to a judgment of the ECtHR, although for criminal decisions there is no problem, since the Law 2865 / 2000 has added a provision to the Criminal Procedural Code (Article 525 paragraph 1 and 5th) permitting the repetition of criminal proceedings, for civil cases there is no provision permitting repetition of the process. In each case, ie regardless of the nature and type of the state act which was the source of the violation found , the decision of the ECtHR does not in itself has the ability to penetrate into national law and abolish the relevant act. The EctHR itself accepts that from its judgments stems only one obligation of result for the state, and the choice of means remains with the State (*Court of Cassation 1816/2007, Arm. 2008,223*).

12. In the present case it is obvious that the perpetrators for the violation found in the HRC Views in the Case of Georgopoulos i.e the Mayor of Patras and the Deputy Mayor of Patras were brought to justice prosecuted with charges for the offence of breaching their service duty under their official capacity. Their penal responsibility was not established and they were acquitted through the No 3966/2012 first instance court of the above mentioned Patras decision. In the other two cases the prosecution of judicial officials in the Katsaris and Georgopoulos cases, leading to a criminal investigation conducted by the Prosecutor of the Supreme Court for the offences of abuse of authority and breach of duty, is pending. So in both cases the penal investigation and trial of the possible perpetrators were conducted as they were brought to justice. The *res judicata* of the HRC Views was binding for bringing perpetrators for the violation of the author's human rights to justice and as such it has been respected. The outcome of the penal investigation and trial though escapes the international obligations of the State. Even the consequences of the EctHR judgment in the domestic legal order are not covering situations other than those between ***the parties in relation to the subject on which the ECtHR ruled***. Furthermore, in relation to the HRC Views, as well as the EctHR judgments on civil cases, there is no provision permitting repetition of the process. In this case where the HRC finds a violation of the applicant's rights and the domestic law provides for the possibility to call on the liability of the State, the author acting in accordance with the provisions of Introductory Civil Law (Articles 104, 105), is well in place to sue for civil damages against the State (or Municipality according to the national provisions) claiming that the unlawful act or omission violated his (Covenant) rights as the HRC has already found (*Court of Cassation 1816/2007*).

NOW THEREFOR

THE COMMITTEE IS INVITED

To dismiss the joint comments of the authors on all three of the aforementioned communications in the follow up to the Views as inadmissible and ill-founded.

Athens, 22 October 2013

The Representative for the Greek Government

Ioannis Bakopoulos
Senior Adviser to the
Legal Council of the State