

## Rule of Law Backsliding Continues in Greece

Joint Civil Society Submission to the European Commission  
on the 2023 Rule of Law Report  
January 2023

### Cross-cutting rule of law issues in Greece

1. **Surveillance, including use of illegal spyware:** In 2022 it was revealed that the National Intelligence Service (Εθνική Υπηρεσία Πληροφοριών, EYP), brought under the competence of the Greek Prime Minister Kyriakos Mitsotakis in July 2019,<sup>1</sup> has systematically ordered surveillance of journalists, politicians and businesspeople under the pretext of national security. According to journalistic evidence, EYP wiretapped journalists Thanasis Koukakis<sup>2</sup> and Stavros Malichoudis,<sup>3</sup> while the Greek state authorities also put under surveillance the journalists investigating the PredatorGate scandal – Nikolas Leontopoulos, Thodoris Chondrogiannos, Tasos Telloglou, Eliza Triantafyllou.<sup>4</sup> Apart from journalists, EYP put under surveillance the MP and Minister of Energy Kostis Hatzidakis,<sup>5</sup> the MEPs Nikos Androulakis<sup>6</sup> and Giorgos Kyrtos,<sup>7</sup> as well as the Head of the Hellenic Armed Forces Konstantinos Floros.<sup>8</sup> MEP Nikos Androulakis was spied on by EYP while he was a candidate for the presidency of PASOK, the third largest party in the Hellenic Parliament.
2. In addition to wiretapping by EYP, Predator spyware has also been illegally used in Greece against politicians, journalists and businesspeople. In 2022, it was revealed that journalist Thanasis Koukakis was spied on via Predator,<sup>9</sup> a year after EYP put him under surveillance,<sup>10</sup> while the same spyware was used to target MEP Nikos Androulakis<sup>11</sup> and

<sup>1</sup> Article 5 PD 81/2019. See also Kathimerini, 'Η αρμοδιότητα της ΕΥΠ περνάει στον πρωθυπουργό', 10 July 2019, <https://bit.ly/3VQvx7u>.

<sup>2</sup> Reporters United, 'Έχθρος του Κράτους: Αποδεικνύουμε ότι η κυβέρνηση Μητσοτάκη παρακολουθούσε τον δημοσιογράφο Θανάση Κουκάκη', 15 April 2022, <https://bit.ly/3VYqXEn>.

<sup>3</sup> Efsyn, 'Πολίτες σε καθεστώς παρακολούθησης από την ΕΥΠ', 14 November 2021, <https://bit.ly/3vQawiC>.

<sup>4</sup> Heinrich Böll Stiftung, 'Σε συνθήκες απόλυτης μοναξιάς', 24 October 2022, <https://bit.ly/3Xk5G9h>; Kathimerini, 'Παρακολουθήσεις: Οι «μαύρες τρύπες» της ΕΛ.ΑΣ.', 21 November 2022, <https://bit.ly/3vUUvYF>; Euractiv, 'Another MEP and journalist the latest victims of 'Greek Watergate'', 16 December 2022, <https://bit.ly/3WqQcQ8>.

<sup>5</sup> Documento, 'Επί δύο χρόνια παρακολουθείτο από την ΕΥΠ ο «στόχος 5046c Κωστής Χατζηδάκης', 12 December 2022, <https://bit.ly/3Czbwvf>.

<sup>6</sup> Efsyn, 'Παραιτήθηκαν αντ' αυτού', 6 August 2022, <https://bit.ly/3Xev6VM>.

<sup>7</sup> Euractiv, 'Another MEP and journalist the latest victims of 'Greek Watergate'', 16 December 2022.

<sup>8</sup> Documento, 'Στόχος 519c της ΕΥΠ ο αρχηγός ΓΕΕΘΑ', 26 December 2022, <https://bit.ly/3vP0EWv>.

<sup>9</sup> Inside Story, 'Ποιος παρακολουθούσε το κινητό του δημοσιογράφου Θανάση Κουκάκη;', 11 April 2022, <https://bit.ly/3VXJ8Kf>.

<sup>10</sup> Reporters United, 'Έχθρος του Κράτους: Αποδεικνύουμε ότι η κυβέρνηση Μητσοτάκη παρακολουθούσε τον δημοσιογράφο Θανάση Κουκάκη', 15 April 2022.

<sup>11</sup> Gownwatch, 'Απόπειρα παρακολούθησης του Νίκου Ανδρουλάκη με το παράνομο λογισμικό υποκλοπών Predator', 2 August 2022, <https://bit.ly/3CxloV9>.

MP Christos Spirtzis.<sup>12</sup> In the case of Nikos Androulakis, the MEP was wiretapped by EYP and targeted by Predator during the same period in September 2021.<sup>13</sup> The joint surveillance targets between EYP and Predator reportedly reach fourteen.<sup>14</sup>

3. Although the Greek government has denied the use of Predator by the Greek authorities, a journalistic investigation has established business links between the Prime Minister's Secretary General (and nephew) Grigoris Dimitriadis and the businessman Felix Bitzios, a shareholder of Intellexa, the company that trades Predator based in Athens, Greece.<sup>15</sup> Moreover, the Greek government provided licenses permitting the export of Predator to Madagascar, while high-ranking officials of the Bangladeshi authorities were trained in Greece in 2021-2022 on the use of a surveillance system linked to businessman Tal Dilian at Intellexa.<sup>16</sup> The Hellenic Data Protection Authority (Αρχή Προστασίας Δεδομένων Προσωπικού Χαρακτήρα, DPA) fined Intellexa in January 2023 for failing to cooperate in investigations into spyware use, as the company submitted unduly late replies to questions and did not provide specific data requested by the Authority.<sup>17</sup>
4. The revelations about the wiretapping scandal and the illegal use of Predator in Greece led to the resignation of Grigoris Dimitriadis as Secretary General of the Greek Prime Minister, as well as the resignation of Panagiotis Kontoleon as chief of EYP in August 2022.<sup>18</sup> However, the Greek government seems to attempt to cover up PredatorGate. In June 2022, it became known that EYP destroyed the surveillance files of Nikos Androulakis and Thanasis Koukakis in order to conceal evidence from the PredatorGate investigations launched by judicial authorities.<sup>19</sup> Moreover, the government has blocked the creation of the official digital archive of citizens under surveillance by the independent Hellenic Authority for Communication Security and Privacy (Αρχή Διασφάλισης Απορρήτου Επικοινωνιών, ADAE) thus obstructing access to the interceptions by EYP,<sup>20</sup> and has actively sought to obstruct ADAE controls on the matter (see [Other: Independent Authorities](#)). After a three-month investigation, the National Transparency Authority (Εθνική Αρχή Διαφάνειας, NTA) announced that all the actions of security services were in accordance with the law and that there were no breaches of Greek and EU legislation (see [Other: Independent Authorities](#)).
5. Importantly, in the urgent measures on EYP adopted by way of emergency decree in August 2022,<sup>21</sup> the Greek government did not revisit the prohibition on ADAE informing individuals of their surveillance by EYP on national security grounds, imposed by a last-

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<sup>12</sup> Gonwatch, 'Απόπειρα παρακολούθησης του Χρήστου Σπίρτζη με το παράνομο λογισμικό υποκλοπών Predator', 16 September 2022, <https://bit.ly/3Qqgr7G>.

<sup>13</sup> Gonwatch, 'Απόπειρα παρακολούθησης του Νίκου Ανδρουλάκη με το παράνομο λογισμικό υποκλοπών Predator', 2 August 2022.

<sup>14</sup> Documento, 'Τα 14 πρόσωπα που έγιναν κοινός στόχος παρακολούθησης από ΕΥΠ και Predator', 5 December 2022, <https://bit.ly/3Qrg24W>; Reporters United, 'Μεσοτοιχία το Μαξίμου με το Predator', 4 August 2022, <https://bit.ly/3GT09Ro>.

<sup>15</sup> Reporters United, 'Ο Μεγάλος Ανιψιός κι ο Μεγάλος Αδερφός', 3 June 2022, <https://bit.ly/3X1vpDs>.

<sup>16</sup> New York Times, 'How the Greek Spyware Industry Spiraled Out of Control', 8 December 2022, <https://nyti.ms/3XenCSu>; Haaretz, 'Israeli Spy Tech Sold to Bangladesh, Despite Dismal Human Rights Record', 10 January 2023, <https://bit.ly/3W1XZU1>.

<sup>17</sup> DPA, Decision 2/2023, 13 January 2023, <https://bit.ly/3QGBmU2>.

<sup>18</sup> Reporters United, 'PredatorGate: Ο Γρηγόρης Δημητριάδης κάνει αγωγές, εμείς συνεχίζουμε την έρευνα', 7 August 2022, <https://bit.ly/3itgYJr>.

<sup>19</sup> Efsyn, 'Έντολή καταστροφής αρχείων κι αποδείξεων', 30 August 2022, <https://bit.ly/3jVhnEK>.

<sup>20</sup> Reporters United, 'Το μυστικό κρύβεται στο αρχείο: Ο βρόμικος πόλεμος του Μαξίμου κατά της ΑΔΑΕ', 29 December 2022, <https://bit.ly/3XnevPF>.

<sup>21</sup> Emergency Decree 9.8.2022 "Urgent provisions on strengthening integrity in the functioning of the National Intelligence Service", Gov. Gazette A' 152/9.8.2022.

minute amendment adopted as Article 87 L 4790/2021 (see [Other: Law-Making](#)).<sup>22</sup> Furthermore, the recently adopted L 5002/2022 provides that surveillance on national security grounds shall only be disclosed to affected persons three years after completion and upon decision not by ADAE but by a three-member body, composed by the two Prosecutors involved in EYP surveillance orders and the Head of ADAE.<sup>23</sup> The provision has already been sharply criticised *inter alia* by ADAE,<sup>24</sup> the National Commission for Human Rights,<sup>25</sup> the Bar Associations of Athens, Thessaloniki, Piraeus and Larissa,<sup>26</sup> and legal scholars as incompatible with the Constitution and the ECHR.<sup>27</sup>

6. Whereas the European Commission had noted in August 2022 that it “is aware of reports in relation to the use of the Predator spyware in Greece” and that it “continues to monitor and gather information in this regard and is looking forward to the results of the European Parliament Inquiry Committee on this issue”,<sup>28</sup> it stated in November 2022 that it “is not aware of the use of Pegasus or alike software beyond information that are publicly available.”<sup>29</sup> Subsequently, however, the Commission confirmed again that it “continues to monitor and gather information in this regard, and is looking forward to the results of the European Parliament Committee of Inquiry to investigate the use of Pegasus and equivalent surveillance spyware on this issue.”<sup>30</sup>
7. **Police violence & impunity of law enforcement officers:** Incidents of police violence and arbitrariness are not isolated cases but rather a frequent and increasingly common phenomenon in Greece. Reports of arbitrariness on the part of law enforcement officers in 2021 increased by 41% on the previous year, according to the Ombudsman.<sup>31</sup> Complaints were made about unjustified and excessive use of force by police officers against demonstrators, journalists or citizens in general almost every month of 2022.<sup>32</sup> Furthermore, the lack of adequate investigation of these reports and the ensuing virtual impunity enjoyed by the police officers involved seems to be an accepted *status quo* in the country. Police officers’ unjustified use of state violence

<sup>22</sup> Reporters United, ‘Παρακολουθήσεις ΕΥΠ: Σιωπή, ο βασιλιάς ακούει!’, 4 January 2022, <https://bit.ly/3XmiUIM>.

<sup>23</sup> Article 4(7) L 5002/2022.

<sup>24</sup> ADAE, ‘Δελτίο Τύπου της ΑΔΑΕ σχετικά με το Νομοσχέδιο για τις άρσεις του απορρήτου κλπ’, 21 November 2022, <https://bit.ly/3ZwyYDy>.

<sup>25</sup> National Commission for Human Rights, ‘Σημείωμα της ΕΕΔΑ επί του Σχεδίου Νόμου για το απόρρητο των επικοινωνιών, την κυβερνοασφάλεια και την προστασία των προσωπικών δεδομένων των πολιτών’, 5 December 2022, <https://bit.ly/3QATKhH>.

<sup>26</sup> Bar Association of Athens, ‘Απόφαση του Διοικητικού Συμβουλίου του ΔΣΑ για τη Γνωμοδότηση του Εισαγγελέα του Αρείου Πάγου σχετικά με την άσκηση των ελεγκτικών αρμοδιοτήτων της ΑΔΑΕ’, 12 January 2023, <https://bit.ly/3H2WJMH>; Bar Association of Thessaloniki, ‘Ψήφισμα Δ.Σ.Θ. για τη Γνωμοδότηση του Εισαγγελέα του Αρείου Πάγου’, 14 January 2023, <https://bit.ly/3CYHUaO>; Bar Association of Piraeus, ‘Απόφαση Δ.Σ.Π. για τις ελεγκτικές αρμοδιότητες της ΑΔΑΕ’, 13 January 2023, <https://bit.ly/3GKJaPW>; Bar Association of Larissa, ‘Ανακοίνωση του Δ.Σ. του Δ.Σ.Λ. αναφορικά με την υπ’ αριθμ. 1/2023 Γνωμοδότηση του κ. Εισαγγελέα του Α.Π.’, 13 January 2023, <https://bit.ly/3HiA26Y>.

<sup>27</sup> Ethnos, ‘16 Συνταγματολόγοι κατά γνωμοδότησης Ντογιάκου: «Υπάρχουν σοβαρά ατοπήματα»’, 12 January 2023, <https://bit.ly/3Clpxa3>.

<sup>28</sup> European Commission, Reply to written question E-1449/2022, 4 August 2022.

<sup>29</sup> European Commission, Reply to written question E-3029/2022, 3 November 2022.

<sup>30</sup> European Commission, Reply to written question E-2858/2022, 24 November 2022; Reply to written question E-2804/2022, 5 January 2023.

<sup>31</sup> Ombudsman, *Ειδική Έκθεση του Συνηγόρου του Πολίτη ως Εθνικού Μηχανισμού Διερεύνησης Περιστατικών Αυθαιρεσίας για το 2021*, <https://bit.ly/3GJwJyH>.

<sup>32</sup> The Manifold, ‘Χρονολόγιο αστυνομικής αυθαιρεσίας’, <https://bit.ly/3VPT4Wb>; Govwatch, ‘Reports : Police Violence & Arbitrariness’, <https://bit.ly/3WQ8knH>. These multiple incidents of violence against journalists indicate that the recommendation made by the European Commission in the 2022 Rule of Law Report, to “Establish legislative and other safeguards to improve the physical safety and working environment of journalists, in line with the recently adopted Memorandum of Understanding and taking into account European standards on the protection of journalists”, has not had any practical impact to date.

without effective systems of accountability appears to constitute a systemic problem which is not being properly addressed by the Greek government, despite consistent condemnations from the European Court of Human Rights (ECtHR) (see [Justice: Independence](#)). Special reference should be made to three incidents that took place in 2022, which highlight different aspects of the problem:

- 7.1. On 5 December 2022, a police officer shot a minor in the head during a chase because he left a petrol station without paying for the fuel he put in his car.<sup>33</sup> The youth, who succumbed to his injuries, was from the Roma minority of Greece. The police officer who shot him has been released from detention.<sup>34</sup> This is not the first time that police officers have been accused of using excessive force against young Roma people.<sup>35,36</sup>
  - 7.2. In 2019, the Indares family complained that they were subjected to unprovoked verbal abuse and physical violence by police officers in their home, and that their subsequent arrest was entirely unjustified. However, the only criminal charges that were pursued in the case were against the family itself. The family was eventually acquitted at trial in November 2022. The case raises concerns and questions as to whether police violence and arbitrary arrest and detention are adequately investigated and whether perpetrators are held to account.<sup>37</sup>
  - 7.3. In 2020 the MP Yanis Varoufakis reported that he was verbally abused by a police officer. A preliminary investigation was carried out into the incident, but the police officer in question could not be identified and the case was therefore dropped in 2022, again raising questions as to the effectiveness of investigations into alleged illegal or arbitrary actions of police officers.
8. **Enforced disappearance of people seeking asylum & targeting of NGOs and human rights defenders:** Unlawful push backs of refugees and migrants to Türkiye constitute a “de facto general policy” of the Greek government, according to the UN Special Rapporteur on the human rights of migrants,<sup>38</sup> corroborated by multiple monitoring bodies of the United Nations, the Council of Europe and the European Union. The Greek government has not only continued the practice throughout 2022 and systematically discredited the above institutions, civil society and journalists (see [Other: Rule of Law Culture](#)), but has shown unprecedented contempt for interim measures indicated by the ECtHR in relation to assistance and rescue of persons in distress at borders (see [Justice: Efficiency](#)). Investigations into unlawful conduct of law enforcement officials involved in alleged push backs have been entrusted to authorities which lack the requisite guarantees of independence and effectiveness to conduct them, including the NTA and the recently established Fundamental Rights Officer and Special Commission on Fundamental Rights Monitoring at the Ministry of Migration and Asylum

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<sup>33</sup> The Manifold, ‘Τραυματισμός Κ. Φραγκούλη’, 9 December 2022, <https://bit.ly/3GK3eTO>.

<sup>34</sup> ERT, ‘Οι κινήσεις της οικογένειας του 16χρονου μετά την προσωρινή αποφυλάκιση του αστυνομικού – Οι πρώτες αντιδράσεις’, 20 December 2022, <https://bit.ly/3XdwNCz>.

<sup>35</sup> Gownwatch, ‘Police killing of Nikos Sampanis: Racial profiling and violation of the rules of police engagement’, 22 October 2021, <https://bit.ly/3vJW6AG>; The Manifold, ‘Πυροβολισμός κατά ανηλίκων Ρομά’, 15 April 2022, <https://bit.ly/3VKeuE8>.

<sup>36</sup> Omnia, ‘Ελλάν Πασσέ: Ο κ. Τάκης Θεοδωρικάκος είχε προαναγγείλει περισσότερες «καταδίωξεις»’, 5 December 2022, <https://bit.ly/3jVrERA>; Εναλλακτική Παρέμβαση – Δικηγορική Ανατροπή, Facebook Post, 5 December 2022, <https://bit.ly/3vMt9nL>.

<sup>37</sup> Gownwatch, ‘The case of the Indares family: allegations of the use of illegal and unjustified force by police officers’, 30 November 2022, <https://bit.ly/3GKOLqP>.

<sup>38</sup> UN Special Rapporteur on the human rights of migrants, *Human rights violations at international borders: trends, prevention and accountability*, A/HRC/50/31, para 32, <https://bit.ly/3OuPQFm>.

(see [Other: Independent Authorities](#)). Moreover, NGOs and human rights defenders who denounce such practices and support victims thereof in Greece find themselves increasingly targeted through hostile language from high-ranking government officials, as well as criminal prosecution (see [Other: Civil Society](#)).

9. **Declining press freedom:** The freedom of the press was subject to various attacks during 2022. The alarming situation in which the Greek media have found themselves this year is reflected by the fact that Greece is the last EU country in Reporters Without Borders (RSF)'s 2022 World Press Freedom Index (108<sup>th</sup> position).<sup>39</sup> Indeed, RSF's analysis has identified serious issues concerning media freedom in the country: journalists are regularly prevented from covering issues ranging from migration to COVID-19, the ownership of the majority of media is concentrated by a few individuals and businesspeople, some of whom have close ties to the political elite, government officials exercise tight oversight of public media, and the functioning of the broadcast regulator, the Greek National Council for Radio and Television (Εθνικό Συμβούλιο Ραδιοτηλεόρασης, NCRTV), is deemed inadequate. In addition to these issues, the assassination of journalist Giorgos Karaivaz in April 2021 remains unsolved despite the government's promise of a quick investigation.<sup>40</sup>
10. Among the threats against press freedom in Greece in 2022 were the lack of pluralism at the Athens News Agency (Αθηναϊκό Πρακτορείο Ειδήσεων, ANA),<sup>41</sup> the surveillance of journalists<sup>42</sup> and reporters investigating the "PredatorGate" scandal,<sup>43</sup> Strategic Lawsuits against Public Participation (SLAPPs) against journalists investigating the mismanagement of hospital funds,<sup>44</sup> the surveillance scandal<sup>45</sup> and energy,<sup>46</sup> restrictions and injuries of reporters by the Hellenic Police,<sup>47</sup> the arrest of a journalist for documenting the violent arrest of a woman,<sup>48</sup> unnecessary and excessive use of force by the authorities,<sup>49</sup> the attack of a journalist by police officers,<sup>50</sup> the lack of transparency in state media funding (see [Other: Independent Authorities](#)),<sup>51</sup> and the

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<sup>39</sup> RSF, 'RSF's 2022 World Press Freedom Index: a new era of polarisation', <https://bit.ly/3Gs7Xs9>.

<sup>40</sup> Govwatch, 'World Press Freedom Index 2022: Greece drops to 108th place', 4 May 2022, <https://bit.ly/3IDi6EZ>.

<sup>41</sup> Govwatch, 'Journalists' Union denounces the lack of pluralism at the Athens News Agency', 18 November 2022, <https://bit.ly/3lBEmz2>.

<sup>42</sup> Govwatch, 'The case of Thanasis Koukakis, a Greek journalist monitored by the Greek National Intelligence Service and later hacked by Predator spyware', 3 May 2022, <https://bit.ly/3Zu5uG7>.

<sup>43</sup> Govwatch, 'Journalists investigating the wiretapping scandal allegedly under surveillance by state agencies', 7 November 2022, <https://bit.ly/3GCGcgG>.

<sup>44</sup> Govwatch, 'Journalist facing legal action over reporting on the mismanagement of hospital funds', 30 September 2022, <https://bit.ly/3IUWHrd>.

<sup>45</sup> Reporters United, 'PredatorGate: Ο Γρηγόρης Δημητριάδης κάνει αγωγές, εμείς συνεχίζουμε την έρευνα', 7 August 2022, <https://bit.ly/3itgYJr>.

<sup>46</sup> Govwatch, 'Journalists' Union of Athens Daily Newspapers protests the campaign of persecution' against the free press', 30 December 2021, <https://bit.ly/3QvxOnA>.

<sup>47</sup> Govwatch, 'Journalists union complains that police prevented journalists from covering a strike in Malamatina', 5 September 2022, <https://bit.ly/3ZnDKD3>.

<sup>48</sup> Govwatch, 'Journalist arrested for documenting the violent arrest of a woman', 16 January 2022, <https://bit.ly/3QvC32u>.

<sup>49</sup> Govwatch, 'Complaints of unnecessary and excessive use of force by police against journalists during a march held in solidarity with a prisoner on hunger strike, Yiannis Michailidis', 1 August 2022, <https://bit.ly/3W4jbbU>.

<sup>50</sup> Govwatch, 'Journalist Christos Avramidis targeted by police officers in Thessaloniki', 16 January 2022, <https://bit.ly/3Gx4594>.

<sup>51</sup> Govwatch, 'International Press Institute seriously concerned over actions of Greece's National Transparency Authority', 22 June 2022, <https://bit.ly/3GUMgIS>.



arrest and charges (without evidence) against a photojournalist covering a law enforcement operation in Athens.<sup>52</sup>

## I. Justice system

### A. Independence

#### Independence/autonomy of the prosecution service

11. **Persisting ineffectiveness of criminal investigations into ill-treatment by law enforcement bodies:** The Criminal Procedure Code designates Hellenic Police and Hellenic Coast Guard officials as “general investigating officers” (γενικοί ανακριτικοί υπάλληλοι) competent for the conduct of the preliminary investigation (προκαταρκτική εξέταση) and pre-interrogation (προανάκριση) following a Public Prosecutor order or *ex officio*.<sup>53</sup> Furthermore, the Prosecutor may archive cases without preliminary investigation where an administrative inquiry (ένορκη διοικητική εξέταση) has been conducted or a NTA report has been issued.<sup>54</sup> This means that investigations, including administrative inquiries, into potential criminal conduct by law enforcement bodies are carried out by the very same state bodies. These systemic deficiencies have consistently been highlighted through condemnations by the European Court of Human Rights (ECtHR) and corollary Committee of Ministers decisions on the execution of such judgments. In its latest decision on the execution of the *Sidiropoulos & Papakostas v. Greece* group of cases,<sup>55</sup> the Committee of Ministers noted persisting shortcomings and “urged the authorities to redouble their efforts in order to enhance the effectiveness of criminal investigations in line with the CPT recommendations; invited them to provide the Committee by September 2022 with updated statistical and qualitative information about criminal investigations into ill-treatment by law enforcement officers and their outcomes, showing the impact of the measures taken to date”.<sup>56</sup> The Greek authorities have not reported to the Committee at the time of writing.
12. **Recent ECtHR judgments on ineffectiveness and lack of independence of criminal investigations:** The European Court of Human Rights (ECtHR) delivered its judgment in the case of *Safi and others v. Greece* App No 5418/15 in July 2022, rendered final in October 2022. The Court condemned Greece for violations of Articles 2 and 3 ECHR, including for breaching procedural obligations attached to the right to life on account of investigations into a deadly shipwreck off the coast of Farmakonisi. Specifically, the ECtHR found severe deficiencies in the conduct of criminal investigations leading the Public Prosecutor to archive the case, as: (i) the interpreter used for survivors' depositions did not speak their language, resulting in errors in their testimonies; (ii) the survivors' request for access to Coast Guard signals was denied on national security grounds; and (iii) their claims pertaining to a push back attempt were summarily dismissed on the basis that such a practice does not exist, without further assessment.<sup>57</sup> The case has significant bearing on the credibility and quality of the Greek criminal

<sup>52</sup> RSF, Twitter Post, 23 November 2022, <https://bit.ly/3QwmOpO>.

<sup>53</sup> Articles 31(1)(b) and 245 Criminal Procedure Code, L 4620/2019. Independence and impartiality safeguards in the criminal procedure apply to investigating officers as well: Article 25 Criminal Procedure Code.

<sup>54</sup> Article 43(4) Criminal Procedure Code, as amended by Article 102 L 4855/2021.

<sup>55</sup> ECtHR, *Sidiropoulos & Papakostas v. Greece* App No 33349/10, 25 January 2018. Elements of the *Makaratzis v. Greece* App No 50385/99 group have been included herein.

<sup>56</sup> Council of Europe Committee of Ministers, CM/Del/Dec(2021)1411/H46-15, 16 September 2021.

<sup>57</sup> ECtHR, *Safi v. Greece* App No 5418/15, 7 July 2022, paras 121-127.

justice system and corroborates long-standing concerns on the effectiveness of investigations involving law enforcement officers and non-nationals.<sup>58</sup>

13. On the same day, the Strasbourg Court delivered its judgment in *Torosian v. Greece* App No 48195/17, also rendered final in October 2022. The Court found a violation of the procedural limb of Article 3 ECHR stemming from ineffectiveness of investigations into ill-treatment of a prisoner by police officers. The Court noted in particular that the Public Prosecutor failed to conduct a thorough assessment of the circumstances of the case, disregarded medical certificates and dismissed allegations of ill-treatment on the ground that, had he been beaten by police officers, the victim would have been "dragged to the hospital in a miserable state and his body would not present the elements seen in photographs and the expert report". The Prosecutor also claimed that the beatings against the victim had not been established as a consequence of acts of police officers.<sup>59</sup> In response to the *Torosian v. Greece* ruling, the Supreme Court Prosecutor issued Circular 1/2023, urging prosecutors to respond to allegations of ill-treatment in prisons and police stations by: (i) ensuring that preliminary investigations are not conducted by police officers but directly by First Instance Court Prosecutors; (ii) promptly triggering and completing preliminary investigations; (iii) ensuring that forensic examinations are conducted as soon as possible.<sup>60</sup>
14. Similar deficiencies in criminal investigations have been raised with the ECtHR in several pending cases, including:
  - 14.1. *Alkhatib v. Greece* App No 3566/2016, relating to a 2014 lethal shooting of passengers on board a dinghy by Hellenic Coast Guard officers off the coast of Pserimos, and *Almukhlas v. Greece* App No 22776/18, regarding a 2015 lethal shooting on board a boat by Coast Guard officers off the coast of Symi. In both cases, pre-interrogations were conducted by Hellenic Coast Guard personnel.
  - 14.2. *A.E. v. Greece* App No 15783/21, supported by GCR, relating to the alleged push back of the applicant to Türkiye. The applicant had initiated criminal proceedings before the local Public Prosecutor. However, the case was dismissed *inter alia* on the ground that there was no evidence against the Hellenic Police and that Greece, especially the police, never conducts push backs to Türkiye.
  - 14.3. *Muhammad v. Greece* App No 34331/22 relating to the criminal investigation into the death of Muhammad Gulzar, a Pakistani national who was allegedly shot by the Greek authorities at the Turkish-Greek border on 4 March 2020.<sup>61</sup> The case was archived by the Public Prosecutor, without any review of the internal police and army documents pertaining to the operations at the Evros region in March 2020 or of the available video footage. Additionally, the Public Prosecutor did not take into account *inter alia* the forensic reports issued by the Turkish authorities and ignored their request for judicial cooperation. Finally, undue weight was placed on the

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<sup>58</sup> RSA, 'Key points from the Press Conference regarding Farmakonisi shipwreck', 11 July 2022, <https://bit.ly/3fVSwT8>.

<sup>59</sup> ECtHR, *Torosian v. Greece* App No 48195/17, 7 July 2022, paras 80-86.

<sup>60</sup> Supreme Court Prosecutor, Circular 1/2023 'Απόφαση του ΕΔΔΑ από 7-7-2022 στην προσφυγή TOROSIAN κατά Ελλάδας – Γενικές Οδηγίες προς αποφυγή συναφών παραβιάσεων της ΕΣΔΑ', 3 January 2023, <https://bit.ly/3Qhym05>.

<sup>61</sup> Note European Commission, Ares(2020)2505995, 9 July 2020, per which the President of the European Commission inquired with the Greek authorities into the follow up to the incident and informed the European Parliament that "the Greek authorities firmly maintained that no such incident was caused by actions of the Greek Forces."

police officers' statements that no live ammunition was used during March 2020 at the Greek-Turkish borders and that all information to the contrary was "fake news". Muhammad Gulzar's son has lodged a complaint with the ECtHR under the substantive and procedural limb of Article 2 ECHR.

Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

15. **Prohibited employment of judges parallel to judicial functions:** The Greek Constitution prohibits judicial officials from employment parallel to their functions, except where they participate in committees performing disciplinary, scrutiny or adjudication functions.<sup>62</sup> However, asylum decisions are subject to an administrative appeal (*ενδικοφανής προσφυγή*) before the Independent Appeals Committees (*Ανεξάρτητες Επιτροπές Προσφυγών*) of the Appeals Authority under the Ministry of Migration and Asylum.<sup>63</sup> These three-member Committees are exclusively composed by three administrative judges – either first- (*πρωτοδίκες*) or higher-level judges (*εφέτες*) – and are described by legislation as "quasi-judicial bodies" (*οιονεί δικαιοδοτικά όργανα*) staffed by specialised judges, observing the requirements of a "court or tribunal" set out in EU law and falling within the scope of exceptions to the above constitutional prohibition.<sup>64</sup> Administrative judges therefore sit in Appeals Committees parallel to their court functions.
16. Furthermore, domestic law enables individual officials to sit in single-judge Committee composition for a range of asylum appeals, including all appeals lodged on the Eastern Aegean islands.<sup>65</sup> In October 2022, the Council of State received a preliminary reference (*προδικαστικό ερώτημα*) regarding the compatibility of provisions enabling Appeals Committee members to process appeals in single-judge composition with the constitutional prohibition on parallel employment of judicial officials.<sup>66</sup> The case is scheduled to be heard on 28 March 2023.
17. **Persisting concerns on independence of "quasi-judicial" asylum appeal bodies:** Whereas the selection criteria and procedures for Appeals Committee members are set out in L 4375/2016, a recent reform thereof permits the government to "readjust" the procedure and criteria for selection and renewal of Committee mandates through Joint Ministerial Decisions of the Ministers of Justice and Migration and Asylum.<sup>67</sup> This could result in impermissible interference from the executive into the composition and function of "quasi-judicial bodies" deemed by Greece as compatible with the EU law requirements of "court or tribunal".
18. **Judicial review by lower courts of decisions taken by higher-level judges:** First-instance Administrative Courts (*διοικητικά πρωτοδικεία*) are competent for judicial review exclusively in asylum and migration matters.<sup>68</sup> As of 2020, this includes judicial review of decisions taken by the Appeals Committees, meaning that first-instance judges (*πρωτοδίκες*) conduct judicial review of decisions that are often taken by higher-level judges (*εφέτες*) sitting in Appeals Committees – 40 out of 63 Appeals Committee

<sup>62</sup> Article 89 Greek Constitution.

<sup>63</sup> Article 5(2) L 4375/2016, as last amended by Article 47 L 4947/2022.

<sup>64</sup> Explanatory Memorandum to Article 86 L 4399/2016; Council of State, Decision 2347/2017, 22 September 2017 [Plenary], para 20; Decision 536/2020, 2 April 2020, para 5.

<sup>65</sup> Article 5(7) L 4375/2016, as last amended by Article 47 L 4947/2022.

<sup>66</sup> Council of State, 'Προδικαστικό ερώτημα μετά την υπ' αριθμ. ΑΔ534/2022 του Διοικητικού Πρωτοδικείου Θεσσαλονίκης', 7 October 2022, <https://bit.ly/3OsmFmC>.

<sup>67</sup> Article 5(5a) L 4375/2016, inserted by Article 47 L 4947/2022.

<sup>68</sup> Article 15(1) L 3068/2002, as last amended by Article 57(1) L 4689/2020. Specifically, the Administrative Court of Athens operates four specialised sections (10<sup>th</sup>, 21<sup>st</sup>, 23<sup>rd</sup>, 34<sup>th</sup>) for judicial review.



members are higher-level judges as of 2023.<sup>69</sup> The Council of State has ruled the practice not to contravene the Constitution, on the ground that administrative judges participate in Appeals Committees not as judicial officials but as “state officials – members of independent authorities of the executive”.<sup>70</sup> The Court's case law casts significant doubt on the institutional status of the Appeals Committees and contradicts the legislative rationale behind the adjudication of asylum appeals by administrative judges: Committees staffed by “three (3) “Judicial Officials of the Administrative Courts, who have the absolute expertise on refugee law, due to the longstanding adjudication of relevant cases by these Courts, and additionally in light of the independence and impartiality of Judicial Officials, strengthens the protection offered and offers the highest safeguard to applicants that their applications will be examined by a body which meets all the guarantees required by EU law and by the ECHR.”<sup>71</sup>

## B. Quality of justice

### Accessibility of courts

19. **Administrative justice:** Applications for judicial review (*αιτήσεις ακύρωσης*) of asylum decisions before first-instance Administrative Courts as described above can only be filed by a lawyer. The remedy remains largely inaccessible in the absence of a free legal assistance scheme. Legal aid may only be requested under the general provisions of Greek law,<sup>72</sup> which are in any event not tailored to asylum seekers and cannot be accessed by them in practice due to a number of obstacles. Specifically, the request for legal aid must be submitted by written application in Greek, and legal aid is granted only if the legal remedy for which the legal assistance is requested is not considered “manifestly inadmissible” or “manifestly unfounded”.<sup>73</sup> Accordingly, as already found by the UN Working Group on Arbitrary Detention, “Inadequate legal aid is provided for challenging a second instance negative decision on an asylum application, and the capacity of NGOs to file this application is very limited given the number of persons in need of international protection”.<sup>74</sup> In the first eleven months of 2022, whereas the Appeals Authority issued 16,162 decisions rejecting asylum claims on the merits or on admissibility, no more than 725 judicial review applications (4.5%) were filed with the Administrative Courts.<sup>75</sup>
20. Moreover, significant obstacles mar access of third-country nationals, including asylum seekers, to remedies against immigration detention before first-instance Administrative Courts (“objections against detention”).<sup>76</sup> As a rule, persons in administrative detention are not informed on the grounds of their detention and of the possibility to lodge objections against them. Detention orders and other relevant documents are communicated to detainees in Greek and are not translated or explained in a language they understand. Moreover, contrary to its EU law obligations,<sup>77</sup> Greece has still not set up a free legal assistance scheme for review of detention orders before Administrative Courts and refrains from granting such assistance in practice. Whereas the Hellenic Police issued a total of 21,044 detention orders in return, deportation or

<sup>69</sup> JMD 13389/2023, Gov. Gazette YOΔΔ 8/10.1.2023.

<sup>70</sup> Council of State, Decisions 1580/2021 and 1581/2021 [Plenary], 8 October 2021, para 14.

<sup>71</sup> Hellenic Parliament, *Αιτιολογική έκθεση στο σχέδιο νόμου «Περί Διεθνούς Προστασίας»*, 21 October 2019, 37-38, <https://bit.ly/3mlrECP>.

<sup>72</sup> Articles 276 and 276A Administrative Procedure Code, L 2717/1999. See also Article 37 PD 18/1989, Gov. Gazette A' 8/9.1.1989.

<sup>73</sup> Article 276(5) Administrative Procedure Code.

<sup>74</sup> UN Human Rights Council, *Visit to Greece – Report of the Working Group on Arbitrary Detention*, A/HRC/45/16/Add.1, 29 July 2020, para 85, <https://bit.ly/3dL8lOU>.

<sup>75</sup> Ministry of Migration and Asylum, *Statistical data*, November 2022, 16-17, <https://bit.ly/3WMTbTz>.

<sup>76</sup> Article 76(3) L 3386/2005; Article 30(2) L 3907/2011; Article 50 Asylum Code, L 4939/2022.

<sup>77</sup> Article 9(6) Reception Conditions Directive; Article 13(4) Return Directive.

asylum procedures in 2021, only 1,886 objections against detention were lodged before the Administrative Courts. This means that less than one out of ten detention orders (8.96% of the total detention orders) were brought before the courts through the remedy foreseen in Greek law.<sup>78</sup> Over the years, the ECtHR,<sup>79</sup> the CPT,<sup>80</sup> and UN monitoring bodies<sup>81</sup> have found that the objections remedy is not accessible in practice, while the Council of the European Union and European Commission have highlighted systematic non-compliance with EU law in the recent Schengen evaluation recommendations to Greece regarding systematic provision of “effective access to linguistic assistance” and “effective access to free legal assistance”.<sup>82</sup> However, no action has been taken by the Greek authorities in this regard.<sup>83</sup>

21. **Criminal justice:** The Code of Criminal Procedure provides that free legal assistance should be provided by the investigating judge (*ανακριτής*) *ex officio* in cases of felonies and upon request by the defendant in misdemeanours.<sup>84</sup> Defendants also have the right to request a deadline of at least 48 hours to prepare their statement.<sup>85</sup> However, criminal case files concerning migrant defendants that have come to the attention of HIAS repeatedly state that the defendants do not wish to avail themselves of the right to free legal assistance and that they prefer to provide their statements immediately. Furthermore, migrant defendants on Lesbos are summoned at the refugee camp where they were registered when they arrived in Greece. If they are not found there – usually because they have been transferred to the mainland by the Greek authorities – they are considered to be of “unknown residence” and are tried *in absentia*. Nevertheless, their real address is known to the Asylum Service, where they are obliged to report it as soon as possible and at the latest upon renewing their asylum seeker's card.
22. Significant shortcomings also undermine the quality of free legal assistance provided by law before criminal courts in cases of felonies. A recent report based on monitoring of 256 criminal trials before the Criminal Courts of Athens demonstrates that: in 35.4% of the cases, a lawyer was only appointed on the day of the hearing; in 91.9% of the cases, the appointed lawyer did not have chance to study the case file outside the court room; in 53.7% of the cases, the time provided to the appointed lawyer for preparation was less than one hour; only in 33.3% of the cases was interpretation provided in order to facilitate communication between the lawyer and the accused so as to prepare defence. Finally, in 36% of the cases, the appointed lawyer did not make any submissions in defence of the accused.<sup>86</sup>

<sup>78</sup> Ministry of Citizen Protection, Reply to parliamentary question, 7017/4/25899-γ', 16 March 2022, <https://bit.ly/3jrPsMI>.

<sup>79</sup> ECtHR, *Kaak v. Greece* App No 34215/16, 3 October 2019; *O.S.A. v. Greece* App No 39065/16, 21 March 2019; *J.R. v. Greece* App No 22696/16, 25 January 2018, para 99.

<sup>80</sup> CPT, *Report on the visit to Greece*, CPT/Inf(2020)35, 19 November 2020, para 23; *Report on the visit to Greece*, CPT/Inf(2019)4, 19 February 2019, para 79.

<sup>81</sup> UN Human Rights Council, *Visit to Greece – Report of the Working Group on Arbitrary Detention*, A/HRC/45/16/Add.1, 29 July 2020, para 62.

<sup>82</sup> Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2021 evaluation of Greece on the application of the Schengen acquis in the field of return, 13662/21, 10 November 2021, paras 1-2. See also European Commission, Reply to written question P-5159/2021, 19 January 2021.

<sup>83</sup> References to the establishment of a Registry of Lawyers for legal aid in detention review in a December 2021 Action Plan have not led to any changes in practice to date: Council of the European Union, *Schengen evaluation – Action Plan to remedy the deficiencies identified in the 2021 evaluation on the application of the Schengen acquis in the field of return*, 5043/22, 25 January 2022.

<sup>84</sup> Article 99(3) Criminal Procedure Code.

<sup>85</sup> Article 103(1) Criminal Procedure Code.

<sup>86</sup> Legal Aid Watch, *Συμπεράσματα και προτάσεις για την παροχή νομικής βοήθειας σε ποινικές υποθέσεις*, 29 June 2022, <https://bit.ly/3QQdddc>.

23. **Inadequacy of JustStat data:** L 4700/2020 has provided for the establishment of the Office for the Collection and Processing of Judicial Statistics (JustStat) at the Ministry of Justice.<sup>87</sup> Provisions of the Ministry of Justice Regulation<sup>88</sup> and a dedicated PD 47/2022 regulate issues concerning the operation of this office, as well as the maintenance and dissemination of the collected statistical data. However, the only statistical data available and accessible on the website of the Ministry of Justice to date are "statistics by jurisdiction" for civil, criminal and administrative proceedings,<sup>89</sup> and data concerning convictions for serious offences in 2022.<sup>90</sup> The data available appear to be patchy, inconsistent and incomplete. For example, the only information made available in some cases is the number of cases relating or the number of judges in service per reference period. There is no information at all on the criminal justice system in 2022, except for the number of convictions issued by year as found in the corresponding section of the data, while the 2021 data make no mention e.g. of the crimes to which pending proceedings relate. It should be noted that statistics on the offences committed and the profiles of the alleged perpetrators were kept by the Hellenic Statistical Authority, but only up to 2020. Nowhere does there seem to be any official data – published by the Ministry of Justice or the courts – on the timeframes and delays in prosecuting and concluding cases. For this reason, the Plenary of the Presidents of Greek Bar Associations had filed a request for access to these statistics per court in 2021, which was however rejected by the President of the Supreme Court.<sup>91</sup>

### C. Efficiency of the justice system

#### Length of proceedings

24. Greece is reported to have the slowest justice system in the EU,<sup>92</sup> as delays in the judicial system continue to be a systemic problem.<sup>93</sup> More than half of ECtHR judgments delivered against Greece concern the length of judicial proceedings.<sup>94</sup>
25. **Length of civil justice:** In the first-instance Court of Athens, interim injunctions (*προσωρινές διαταγές*),<sup>95</sup> i.e. the most important form of interim judicial protection, are scheduled for hearing after 15 days.<sup>96</sup> Cases lodged in 2022 are scheduled for hearing in 2029, and judgments are often issued many years after the hearing.<sup>97</sup>

<sup>87</sup> Article 358 L 4700/2020.

<sup>88</sup> Article 6 PD 6/2021.

<sup>89</sup> Ministry of Justice, *Στατιστικά στοιχεία από 2016 έως σήμερα*, <https://bit.ly/3ZbVvkt>.

<sup>90</sup> Ministry of Justice, *Ανοικτά δεδομένα Υπουργείου Δικαιοσύνης*, <https://bit.ly/3Qg7VrR>.

<sup>91</sup> Bar Association of Athens, 'Απάντηση της Συντονιστικής Επιτροπής της Ολομέλειας των Προέδρων Δικηγορικών Συλλόγων Ελλάδος στην Πρόεδρο του Αρείου Πάγου: Η πρόσβαση στα στοιχεία που αφορούν τη Δικαιοσύνη είναι επιταγή διαφάνειας και δημοκρατίας', 21 July 2021, <https://bit.ly/3vEP2Fh>.

<sup>92</sup> Kathimerini, 'Justice keeps moving at a snail's pace', 14 October 2022, <https://bit.ly/3GnnDg6>.

<sup>93</sup> Dikastiko, 'Δικαιοσύνη: 45 νομοθετήματα σε 21 χρόνια απέτυχαν να την επιταχύνουν – Τι πρότειναν 4 πρώην υπουργοί', 24 November 2011, <https://bit.ly/3jUPexK>.

<sup>94</sup> ECtHR, *Violations by Article and by State 1959-2021*, <https://bit.ly/3vEYmsP>.

<sup>95</sup> Article 691A Civil Procedure Code, as amended by Article 48 L 4842/2021.

<sup>96</sup> Bar Association of Athens, 'Δραματικές καθυστερήσεις για την έκδοση Πιστοποιητικών και προσδιορισμού αιτημάτων Προσωρινών Διαταγών- Συνάντηση του ΔΣΑ με την Τριμελή Διοίκηση του Πρωτοδικείου Αθηνών', 2 December 2022, <https://bit.ly/3inGjEt>.

<sup>97</sup> Proto Thema, 'Οι καθυστερήσεις στη Δικαιοσύνη προκαλούν προβλήματα στην Οικονομία, τρίζουν οι επιχειρηματίες', 9 December 2022, <https://bit.ly/3ZbMFaG>; Dikastiko, 'Βολές Βερβεσού για "αρνησιδικία": "Δεν είναι δυνατόν να αποφασίζουν μόνοι τους οι δικαστές, πόσες υποθέσεις θα χρεώνονται"!', 20 May 2022, <https://bit.ly/3vHr6Bu>.

26. **Length of administrative justice:** Significant delays persist with regard to the delivery of administrative justice, including at the level of lower courts. According to official statistics, the number of resolved cases by first-instance Administrative Courts has dropped from 81,055 in 2019 and 75,863 in 2020 to 58,396 in 2021.<sup>98</sup> Specifically in the area of asylum, out of 3,564 applications lodged with the first-instance Administrative Courts of Athens and Thessaloniki since they became competent for judicial review of asylum decisions, 2,166 were still pending at the end of November 2022.<sup>99</sup> RSA has lodged 50 judicial review applications before the Administrative Court of Athens since it became competent to judicially review asylum decisions. Of those, no more than two have been concluded at the time of writing. Despite strict timeframes for hearings and decisions in judicial review of asylum cases in the Asylum Code,<sup>100</sup> postponements are routinely ordered *proprio motu* (οἰκοθεν αναβολές) by administrative courts for reasons of capacity. The Administrative Court of Athens has postponed the hearing eight times in one RSA case,<sup>101</sup> seven times in two cases,<sup>102</sup> and six times in another three.<sup>103</sup> Crucially, an onward review (έφεση) lodged by RSA in 2018 was postponed by the Council of State no less than 21 times before being heard four years later.<sup>104</sup>

## Other

27. **Non-compliance with ECtHR orders of interim measures under Rule 39:** Greece has demonstrated unprecedented contempt for interim measures indicated by the ECtHR under the Rule 39 of the Rules of Court during the reference period, particularly as regards assistance and rescue of persons in distress in border areas. Between 15 March and 21 October 2022 in particular, the Strasbourg Court granted at least 21 interim measures under Rule 39 in a series of cases of refugees and migrants in the Evros region, ordering the Greek authorities to ensure they are provided with basic assistance and are not removed from the territory. Despite the court orders, most people were pushed back or forcibly expelled to Türkiye, in breach of Article 34 ECHR.<sup>105</sup> According to testimonies of many of the individuals concerned, people were transferred and informally held for several hours in detention facilities on the Greek mainland, forced to strip naked and subjected to violence before being transported to the Evros river bank, being forced on board boats and pushed back. Those formally arrested and registered in Greece report having previously experienced push backs.<sup>106</sup> Among the cases of violent push backs to Türkiye in contempt of ECtHR orders is *A.D. and others v. Greece* App No 18940/22 regarding 37 Syrian refugees, including 17 children, who reported being pushed back to Türkiye while the Court's order was pending; interim measures were granted on 19 April 2022. Some of them re-entered Greece three more

<sup>98</sup> General Commissioner of Administrative Courts, *General Report 2021*, 31 March 2022, 10, <https://bit.ly/3lrRqA>.

<sup>99</sup> Ministry of Migration and Asylum, *Statistical data*, November 2022, 17.

<sup>100</sup> Articles 116-117 Asylum Code.

<sup>101</sup> AK869/16.07.2020, pending hearing.

<sup>102</sup> AK255/14.02.2020, heard on 29 September 2021; AK765/30.06.2020, heard on 17 November 2022.

<sup>103</sup> AK868/16.07.2020, heard on 6 May 2022; AK1364/30.09.2020, pending hearing; AK1369/30.09.2020, pending hearing.

<sup>104</sup> E1686/13.06.2018, heard on 27 September 2022.

<sup>105</sup> For details on the 19 cases represented before the ECtHR by GCR solely or jointly with other organisations, GCR, *Information Note on interventions and on interim measures granted by the ECtHR in cases regarding pushbacks*, 1 September 2022, <https://bit.ly/3fmraBB>. In addition to cited cases, Interim measures were granted for two more cases: namely, on *S.G. and others v. Greece* App No 44833/22, 22 September 2022; *A.Z. and others v. Greece* App No 49474/22, 21 October 2022. In both cases the asylum seekers were formally arrested and registered by the Greek authorities.

<sup>106</sup> GCR et al., 'Stop immediately the pushbacks that endanger human lives and discredit the country internationally', 5 October 2022, <https://bit.ly/3FaxnuZ>.

times and were stranded again on an islet in the Evros river. A similar case is *K.M.I. and others v. Greece* App No 19419/22 regarding 39 Syrian refugees, including 9 children, who report that they were pushed back from Greece to Türkiye twice and that a woman in need of haemodialysis died while stranded on the Evros islet. The second push back took place after the Court's decision. Some of them entered Greece again. In addition to the aforementioned interim measures, from mid-March to the end of October 2022, applications for substantive relief before the ECtHR under Article 34 ECHR have been filed for eight cases and are currently pending.

28. **Impermissible restrictions on the exercise of the legal profession:** Article 34 of the Lawyers Code<sup>107</sup> guarantees lawyers' access to public facilities only upon presentation of professional identity card, subject to no other restriction. In addition, authorisations to lawyers under Article 36 of the Lawyers Code may validly be given in writing or orally.<sup>108</sup> The Lawyers Code provisions are *lex specialis* over any other provision.<sup>109</sup> However, lawyers' access to reception facilities for refugees and migrants (e.g. Reception and Identification Centres, Closed Controlled Access Centres) is subject to additional requirements, namely a request for access to be approved by the camp manager. These are set out in the Ministry of Migration and Asylum Handbook on entry in and exit from Closed Controlled Access Centres. Lawyers have been denied access to such facilities on that basis.<sup>110</sup> The policy contravenes the legal framework governing the legal profession and poses unlawful obstacles to the exercise thereof, resulting in restrictions on or even denial of residents' right to legal assistance and representation. The Ministry of Justice has recalled the safeguards attached to the legal profession in response to a parliamentary question.<sup>111</sup> The Ministry of Migration and Asylum, however, confirmed in response to the same question that authorities require lawyers to produce certified signed authorisations of their clients to be allowed entry into reception facilities for refugees and migrants.<sup>112</sup> A December 2022 opinion of the Bar Association of Athens clarifies that lawyers enjoy free access to facilities accommodating refugees and migrants without prior notification of camp management.<sup>113</sup> Camp management authorities have not aligned their practice to date, however.
29. Additionally, lawyers are exempt from the duty to register on the NGO Members Registry managed by the Ministry of Migration and Asylum, per a May 2021 opinion of the Bar Association of Athens adopted by the Ministry of Migration and Asylum (see [Other: Civil Society](#)).<sup>114</sup> As of the end of 2022, however, facilities such as the Reception and Identification Centre of Evros or the Closed Controlled Access Centre of Lesbos have informed NGO lawyers that they must register on the NGO Members Registry in order to enter the camps in this capacity.
30. **Ineffectiveness of review of immigration detention:** L 3900/2010 amended the domestic legal framework to bring remedies against immigration detention in line with the effectiveness requirement of Article 5(4) ECHR, among other standards. However, the ECtHR has repeatedly found that Greek courts do not ensure "an examination of the

<sup>107</sup> L 4914/2013.

<sup>108</sup> Ministry of Administrative Reform Circular ΔΙΔΔΑ/ΤΔΙ/Φ.15/ 29103,29097 "Representation of citizens before Administrative Authorities by lawyers", 14 September 2018, <https://bit.ly/3i0IEoh>.

<sup>109</sup> Article 166(1) Lawyers Code.

<sup>110</sup> See also AFP, 'Migrant groups decry 'witch-hunt' as Greece tightens grip', 20 November 2022, <https://bit.ly/3AQdNkU>.

<sup>111</sup> Ministry of Justice, Reply to parliamentary question, 200/2022, 25 October 2022, <https://bit.ly/3i72HSe>.

<sup>112</sup> Ministry of Migration and Asylum, Reply to parliamentary question, 625975/2022, 20 October 2022, <https://bit.ly/3U2AkC3>.

<sup>113</sup> Bar Association of Athens, Opinion No 185, 1 December 2022, 2.

<sup>114</sup> Bar Association of Athens, Opinion No 166, 5 May 2021; Ministry of Migration and Asylum, Reply to GCR, 131513/2022, 15 July 2021.



lawfulness of... detention to an extent sufficient to reflect the possibilities offered by the amended version of Article 76 § 5 [L. 3386/2005]" in practice.<sup>115</sup> Major persisting concerns include:

- 30.1. The lack of legal certainty and predictability of court decisions on objections against detention, compounded by the absence of an appeal stage to harmonise and/or correct decisions of first-instance Administrative Courts. GCR has supported a number of cases where the relevant Administrative Courts' decisions were contradictory, whilst dealing with substantially the same facts.<sup>116</sup>
- 30.2. The lack of proper examination, or disregard, by courts of applicants' critical submissions regarding the lawfulness of their detention. This includes cases where courts: (i) have found that "submissions on the impossibility of return to Türkiye do not affect the lawfulness of detention" for the purpose of removal thereto;<sup>117</sup> (ii) have disregarded allegations that detention has been ordered on grounds not set out in national legislation;<sup>118</sup> (iii) have refrained from terminating pre-removal detention of *bona fide* asylum seekers;<sup>119</sup> (iv) have failed to assess the impact of impossibility of removal in cases of asylum seekers, whilst citing the C-601/15 PPU *J.N.* ruling of the CJEU to state that detention of asylum seekers is imposed to ensure the effectiveness of the removal procedure.<sup>120</sup>
- 30.3. Ineffective assessment of allegations on detention conditions. As a rule, courts dismiss them as unsubstantiated<sup>121</sup> and/or solely examine detention conditions based on information provided by the Hellenic Police.<sup>122</sup>
31. The ineffectiveness of judicial review of immigration detention is corroborated by the outcome of *ex officio* review of detention orders by Administrative Courts of detention orders,<sup>123</sup> subject to the same legal standards as the objections remedy. Out of a total of 8,492 decisions on *ex officio* review in 2021, 8,434 upheld detention orders and only 58 (0.68%) quashed detention orders.<sup>124</sup>

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<sup>115</sup> Most recently, ECtHR, *E.K. v. Greece* App No 73700/13, 14 January 2021, para 109; *S.Z. v. Greece* App No 66702/13, 21 June 2018, para 72.

<sup>116</sup> For example, on the lack of prospect of readmission to Türkiye of Afghan nationals held in detention for three months, Administrative Court of Corinth, Decision Π4253/2022, date; Π4194/2022, 9 November 2022.

<sup>117</sup> Administrative Court of Athens, Decision AP727/2022, 10 May 2022.

<sup>118</sup> Administrative Court of Corinth, Decision Π3577/2022, 26 September 2022.

<sup>119</sup> Administrative Court of Athens, Decision AP410/2022, 14 March 2022.

<sup>120</sup> Administrative Court of Corinth, Decision Π2867/2022, 12 August 2022.

<sup>121</sup> Administrative Court of Athens, Decision AP1099/2022, 13 July 2022; Decision AP1985/2021; Decision AP1436/2021, 30 July 2021; Decision AP1043/2021, 31 May 2021.

<sup>122</sup> Administrative Court of Corinth, Decision Π2137/2022, 27 May 2022.

<sup>123</sup> Article 50(5) Asylum Code, transposing Article 9(3) Reception Conditions Directive; Article 30(3) L 3907/2011, transposing Article 15(4) Return Directive.

<sup>124</sup> Ministry of Justice, Reply to parliamentary question, 43/2022, 11 March 2022, <https://bit.ly/3N43ePN>.

## II. Anti-corruption framework

### A. Prevention

#### Asset disclosure and party financing rules

32. The obligation to submit asset declarations aims to enhance transparency and democracy and is a key tool in preventing corruption. Submission of these declarations by those subject to such an obligation and scrutiny thereof by the appropriate bodies allows for determining what assets are held by those in positions of power and where they come from. This enables prevention, detection and investigation of corruption, where necessary. Ensuring full transparency in matters relating to political money – politicians' asset declarations and transparency in party finances – through the publication of all relevant documents and audits, subjected to an adequate scrutiny process, is an integral part of adherence to the rule of law. However, there are persistent concerns about the effectiveness by which the audit bodies charged with this scrutiny perform their functions. Three issues that highlight different aspects of the problem are worth mentioning.
33. **Failure of auditing bodies to publish annual reports on asset declarations:** Under Article 3A(7) L 3213/2002, all auditing bodies shall submit an annual report of their activities in March of each year to the Institutions and Transparency Committee of the Parliament and to the Ministers of Finance and Justice, Transparency and Human Rights. The annual report must contain, at a minimum, the number of persons obliged to make a declaration, the number of persons who submitted declarations, the measures taken in the cases where declarations were not submitted, and the results of the audits carried out by the committee. The report shall be uploaded on the official website no later than one week after its submission and remain online for seven years. However, two of the bodies bound by Article 3 L 3213/2003, the C Control Unit of the Anti-Money Laundering Authority and the Public Prosecutor supervising the Internal Affairs Service of the Hellenic Police, consistently fail to publish this report.<sup>125</sup> In fact, when Vouliwatch sent a letter in November 2022 to the C Control Unit to inquire why the annual report is no longer being published on their website and to request access to these reports under the right of access to public information, the Authority essentially replied that it has no obligation to publish the reports and did not respond to the request for access to the documents.<sup>126</sup>
34. **Arrears in audits of asset declarations:** The Parliamentary Committee for the Investigation of Declarations of Assets (CIDA) of Article 3A L 3213/2003 is a special body which performs a dual role. It is one of the control bodies that verify the asset declarations of politicians and judicial officials, and it is also the body that audits the finances of political parties and MPs as per the provisions of L 3023/2002. Given that this committee plays such an important role in detecting and combating corruption, the shortcomings in the data published on its website raise concerns.<sup>127</sup> According to the last annual activity report published by the committee,<sup>128</sup> there were still declarations relating to the years 2016, 2017, and 2018 that had not been audited, and no

<sup>125</sup> Govwatch, 'Audit agency has failed to publish annual report on asset declarations since 2013', 26 October 2022, <https://bit.ly/3jVMWhU>.

<sup>126</sup> Vouliwatch, 'Η αρμόδια Αρχή δεν δημοσιεύει τον έλεγχο των πόθεν έσχες των υπόχρεων του Δημοσίου', 8 November 2022, <https://bit.ly/3Gk7KY0>.

<sup>127</sup> Govwatch, 'Shortcomings in the publication of the work of the The Committee of Parliament for the Investigation of Declarations of Assets (CIDA)', 11 December 2021, <https://bit.ly/3QrTjWj>.

<sup>128</sup> Hellenic Parliament, 'Έκθεση Πεπραγμένων της Επιτροπής Ελέγχου κατά το ημερολογιακό έτος 2021', 4 April 2022, 4, <https://bit.ly/3WIBLHP>.

investigations had been pursued. Only in one case, and only after this case had been made public, did the committee refer the case to the prosecutor in 2022,<sup>129</sup> despite the fact that a report on this case had seemingly been submitted to the committee as early as 2020.<sup>130</sup> In general, the aforementioned observations demonstrate that the recommendation made in the 2022 Rule of Law Report by the European Commission to “Ensure the effective and systematic verification of the accuracy of asset disclosures filed by all types of public officials” does not appear to have been implemented.

35. **Reforms undermining transparency of party financing:** Just four months after the adoption of PD 15/2022 in March 2022, several of its provisions on the auditing processes of the finances of political parties and elected officials were amended by L 4954/2022.<sup>131</sup> Despite the description in the regulatory impact assessment, the changes introduced do not appear to enhance the transparency, accountability and objectivity of the audit mechanisms. On the contrary, they may in some cases lead to the opposite outcome. The legislative changes limit the powers and obligations of the Audit Committee and shift the burden of ensuring transparency to the subjects of the audits rather than the auditing body.<sup>132</sup> For example, the rules allow for financial transactions to be executed without the use of special bank accounts should these sums be deemed – by the political party itself – as being irrelevant to the “functioning of the political party”. Additionally, the maximum limit of election expenses for candidates that can be transacted without making use of the special bank accounts has been increased from 500 to 1,000 €. <sup>133</sup>

#### Public procurement & direct awards

36. **Widespread & increasing use of direct contracting:** According to data retrieved from the Hellenic Single Public Procurement Authority (*Ενιαία Αρχή Δημοσίων Συμβάσεων*), a total of 95,910 public contracts were awarded in the first six months of 2022, corresponding to a total amount of 5.243bn € spent on public procurement awards for this same period.<sup>134</sup> 66,219 out of 95,910 public contracts (69%) were awarded via direct contracting. This excludes direct awards in COVID-19 related contracts which are categorised separately and amount to 1,789 contracts. The fact that over two thirds of the awarded public contracts were carried forward through the direct award process raises significant concerns. Moreover, data for 2022 represent a significant increase in direct awards of public contracts compared to 61,005 in the first half of 2021 and 57,256 in the first half of 2020. This steady increase in direct awards of public procurements led the Hellenic Single Public Procurement Authority to issue on 1 July 2022 a formal communication directed at the Prime Minister's office and to all Ministries. In this document, the Authority highlights its concerns with regards to the public administration's common practice of invoking extreme urgency so as to bypass the due process of public contracting and warns of potential repercussions faced by Greece, as such practices may be interpreted as violating the Treaty on European

<sup>129</sup> Vouliwatch, 'Ανδ. Πάτσης: Στο επίκεντρο του ενδιαφέροντος η δήλωση Πόθεν Έσχες', 26 October 2022, <https://bit.ly/3Gp2u54>; Documento, 'Η επιτροπή πόθεν έσχες ήταν ενήμερη, αλλά... «καθάρισε» τον Ανδρέα Πάτση', 25 October 2022, <https://bit.ly/3igrzYb>.

<sup>130</sup> TVXS, 'Η επιτροπή πόθεν έσχες στη Βουλή γνώριζε για τον Πάτση από το 2020', 25 October 2022, <https://bit.ly/3WOVDJu>; Kathimerini, 'Γραφείο Επιτροπής Πόθεν Έσχες για υπόθεση Πάτση: Ο έλεγχος είναι διαρκής και παρατείνεται όταν προκύπτουν νέα στοιχεία', 26 October 2022, <https://bit.ly/3jXgD1P>.

<sup>131</sup> Articles 19 et seq. L 4954/2022.

<sup>132</sup> Vouliwatch, 'Νομοσχέδιο για το πολιτικό χρήμα: α-διαφάνεια & α-λογοδοσία', 28 June 2022, <https://bit.ly/3ic8yGo>.

<sup>133</sup> Article 4(1) PD 15/2022, as amended by Article 21 L 4954/2022.

<sup>134</sup> Hellenic Single Public Procurement Authority, *Συμβάσεις*, <https://bit.ly/3QIKddJ>.

Union.<sup>135</sup> However, the practice persists e.g. through a recent reform allowing for derogation from public procurement rules for public contracts on the construction and expansion of a fence on the Evros land border.<sup>136</sup>

37. Further to a written question by a MEP, the European Commission noted that:

“Member States have to notify to the Commission their national measures implementing their obligations under the PP Directives, for their assessment. Since the national measures listed by the Honourable Member were not properly notified, the Commission is seeking proper notification from the Greek authorities by September 2022 at the latest and will evaluate the appropriate follow-up actions, subject to their response. The Commission shares the Honourable Member’s concern about the quality of the PP legal environment and potential ensuing issues for the functioning of the national PP system in case of dispersed legislation acts and instability caused by the frequent modifications of the PP law. The low quality of national procurement legislation may put in question full adherence to the principles of equal treatment, non-discrimination, proportionality and transparency, enshrined in the said Directives, which are the necessary elements for ensuring the effective use of public funds by increasing competition and minimising the risk of public funds being wasted.”<sup>137</sup>

The European Commission has not yet replied to a more recent written question on the matter.<sup>138</sup>

#### Measures in place to ensure whistleblower protection and encourage reporting of corruption

38. **Partial transposition of the Whistleblower Directive:** Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law (Whistleblower Directive) was transposed into Greek legislation with a significant delay of seven months. The bill in question was voted in Parliament as L 4990/2022 on 11 November 2022. However, civil society organisations such as Vouliwatch and Transparency International Greece have expressed their deep disappointment as to the extent of protection it actually offers to whistleblowers, as well as regarding its limited scope of application only to breaches of EU law.<sup>139</sup> In addition, the organisations have claimed that the Directive was not fully transposed, as in fact certain provisions were omitted. In particular:

- 38.1. Recital 42 of the Directive states that “Effective detection and prevention of serious harm to the public interest requires that the notion of breach also includes abusive practices, as defined by the case law of the Court, namely acts or omissions which do not appear to be unlawful in formal terms but defeat the object or the purpose of the law”. Despite the above provision, Article 4 L 4990/2022 fails to clearly include in the notion of “breach” the term “abusive practices” in the concept of “breach”.

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<sup>135</sup> Hellenic Single Public Procurement Authority, Υπόμνηση υποχρεώσεων αναθετουσών αρχών/αναθετόντων φορέων που σχετίζονται με την προσφυγή στην εξαιρετική διαδικασία της διαπραγμάτευσης (κατ’ άρθρο 26, 32 & 269 ν. 4412/2016), 3581/2022, 1 July 2022, <https://bit.ly/3luGjNQ>.

<sup>136</sup> Article 77 L 4958/2022.

<sup>137</sup> European Commission, Reply to written question E-1452/2022, 5 July 2022.

<sup>138</sup> European Parliament, Question for written answer E-3102/2022, 19 September 2022.

<sup>139</sup> Vouliwatch, ‘Σχέδιο νόμου για την προστασία των whistleblowers: το Vouliwatch στη Βουλή’, 3 November 2022, <https://bit.ly/3VSM LBb>.

- 38.2. Contrary to the Directive, Article 23 L 4990/2022 provides for "adequate sanctions in cases of non-compliance with the new legal framework for the protection of whistleblowers" but only for natural persons. Conversely, Article 23 of the Directive states that "Member States shall provide for effective, proportionate and dissuasive penalties applicable to natural or legal persons..."

### III. Media freedom and pluralism

39. The alarming situation in which the Greek media have found themselves this year is reflected by the fact that Greece is the last EU country in Reporters Without Borders (RSF)'s 2022 World Press Freedom Index (108<sup>th</sup> position).<sup>140</sup>

#### A. Safeguards against government or political interference and transparency and concentration of media ownership

##### Measures to ensure the fair and transparent allocation of state advertising

40. **Lack of transparency in state advertising** persists despite efforts by Vouliwatch to obtain information on the allocation of COVID-19 campaign funding leading to a January 2022 judgment of the Administrative Court of Appeal of Athens. Despite the ruling, the NTA has insisted on refusing access to the data (see [Other: Independent Authorities](#)).<sup>141</sup>

##### Safeguards against state / political interference

41. **Lack of pluralism at the Athens News Agency:** In November 2022, the Journalists' Union of Athens Daily Newspapers (*Ένωση Συντακτών Ημερήσιων Εφημερίδων Αθηνών*, ESIEA) issued a statement denouncing repeated breach of the principle of media pluralism by the Athens News Agency (*Αθηναϊκό Πρακτορείο Ειδήσεων / Μακεδονικό Πρακτορείο Ειδήσεων*, ANA-MNA).<sup>142</sup> The Union noted that ANA-MNA presents current affairs only through the responses of government officials without presenting original news prompting those responses. The statement was prompted by the Agency's presentation of the Greek government reaction to a Documento article on the surveillance scandal without any prior reference to the article itself (see [Surveillance](#)).

#### B. Framework of journalists' protection, transparency and access to documents

##### Law enforcement capacity, including during protests and demonstrations, to ensure journalists' safety and to investigate attacks on journalists

42. **Ineffective investigations into killing of journalist:** The assassination of journalist Giorgos Karaivaz in April 2021 remains unsolved despite the government's promise of a quick investigation.<sup>143</sup> Authorities have recently stated that they have not been able to locate the perpetrators to date.<sup>144</sup>

<sup>140</sup> RSF, 'RSF's 2022 World Press Freedom Index: a new era of polarisation', <https://bit.ly/3Gs7Xs9>.

<sup>141</sup> Govwatch, 'International Press Institute seriously concerned over actions of Greece's National Transparency Authority', 22 June 2022, <https://bit.ly/3GUMglS>.

<sup>142</sup> Govwatch, 'Journalists' Union denounces the lack of pluralism at the Athens News Agency', 18 November 2022, <https://bit.ly/3lBEmz2>.

<sup>143</sup> Govwatch, 'World Press Freedom Index 2022: Greece drops to 108th place', 4 May 2022, <https://bit.ly/3lDi6EZ>.

<sup>144</sup> Kathimerini, 'Foreign Press Association rejects 'targeting' of journalist by gov't spox', 24 August 2022, <https://bit.ly/3W6Kumb>.



43. **Attacks & intimidation of journalists:** During the reporting period, there have been restrictions and injuries of reporters by the Hellenic Police,<sup>145</sup> arrest of a journalist for documenting the violent arrest of a woman,<sup>146</sup> unnecessary and excessive use of force by the authorities,<sup>147</sup> the attack of a journalist by police officers,<sup>148</sup> and the arrest and charges against a photojournalist covering a law enforcement operation in Athens, without evidence.<sup>149</sup> The government has also sought to discredit journalists covering press freedom, as denounced by the Foreign Press Association in relation to the targeting of Nektaria Stamouli.<sup>150</sup> Particular targeting is also felt by journalists covering the country's asylum system. As summarised by the New York Times in November 2022, "Today, any journalist who covers refugee arrivals to the Aegean Islands or the Evros land border with Turkey risks arrest. Journalists avoid refugee landings, fearing that we, like several humanitarian workers currently on trial, could even be unjustly accused of human trafficking and espionage."<sup>151</sup> Surveillance, including via Predator spyware, has also been imposed on journalists<sup>152</sup> and reporters investigating the "PredatorGate" scandal.<sup>153</sup>

Law suits (incl. SLAPPs) and convictions against journalists (incl. defamation cases) and measures taken to safeguard against manifestly unfounded and abusive law suits

44. Strategic Law suits against Public Participation (SLAPPs) have been mounted against journalists investigating the mismanagement of hospital funds,<sup>154</sup> the surveillance scandal<sup>155</sup> and energy.<sup>156</sup>

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<sup>145</sup> Govwatch, 'Journalists union complains that police prevented journalists from covering a strike in Malamatina', 5 September 2022, <https://bit.ly/3ZnDKD3>.

<sup>146</sup> Govwatch, 'Journalist arrested for documenting the violent arrest of a woman', 16 January 2022, <https://bit.ly/3QvC32u>.

<sup>147</sup> Govwatch, 'Complaints of unnecessary and excessive use of force by police against journalists during a march held in solidarity with a prisoner on hunger strike, Yiannis Michailidis', 1 August 2022, <https://bit.ly/3W4jbbU>.

<sup>148</sup> Govwatch, 'Journalist Christos Avramidis targeted by police officers in Thessaloniki', 16 January 2022, <https://bit.ly/3Gx4594>.

<sup>149</sup> RSF, Twitter Post, 23 November 2022, <https://bit.ly/3QwmOpO>.

<sup>150</sup> Kathimerini, 'Στέλνουν στον εισαγγελέα τις σκιές της Greek Mafia', 5 December 2022, <https://bit.ly/3vY3Ajr>.

<sup>151</sup> New York Times, 'How Free Is the Press in the Birthplace of Democracy?', 26 November 2022, <https://nyti.ms/3VxEuU4>.

<sup>152</sup> Govwatch, 'The case of Thanasis Koukakis, a Greek journalist monitored by the Greek National Intelligence Service and later hacked by Predator spyware', 3 May 2022, <https://bit.ly/3Zu5uG7>.

<sup>153</sup> Govwatch, 'Journalists investigating the wiretapping scandal allegedly under surveillance by state agencies', 7 November 2022, <https://bit.ly/3GCGcgG>.

<sup>154</sup> Govwatch, 'Journalist facing legal action over reporting on the mismanagement of hospital funds', 30 September 2022, <https://bit.ly/3IUWHrd>.

<sup>155</sup> Reporters United, 'PredatorGate: Ο Γρηγόρης Δημητριάδης κάνει αγωγές, εμείς συνεχίζουμε την έρευνα', 7 August 2022, <https://bit.ly/3itgYJr>.

<sup>156</sup> Govwatch, 'Journalists' Union of Athens Daily Newspapers protests the campaign of persecution' against the free press', 30 December 2021, <https://bit.ly/3QvxOnA>.

## IV. Other institutional issues related to checks and balances

### A. The process for preparing and enacting laws

Framework, policy and use of impact assessments, stakeholders' / public consultations (particularly consultation of judiciary on judicial reforms), and transparency and quality of the legislative process

45. The quality of the legislative process remains problematic, with no tangible effects of the better law-making objectives enacted in the 2019 Executive State Act.<sup>157</sup>
46. **'Omnibus' legislation:** The Greek government continues to table 'omnibus' bills (πολυνομοσχέδια) with the aim of rapidly effecting changes across various sectors through a single legislative act. The contents of such bills are largely divided into "provisions of competence" (διατάξεις αρμοδιότητας) of the respective Ministries. During 2022, Vouliwatch has detected a total of 42 'omnibus' bills which constitute 32% of the total bills submitted in Parliament. Examples of 'omnibus' legislation during the reporting period include the following:
- 46.1. The bill "National Strategic Plan for Combating Corruption, provisions on human resources and Local Government Organizations, legislative framework for the training of students of the National School of Public Administration and Local Government for inclusion in the P. E. Executive Staff, provisions for the completion of the transfer of the forestry services to the Ministry of Environment and Energy, provisions for the implementation of the National Recovery and Resilience Plan "Greece 2.0", National Pension for Expatriates and other urgent provisions", adopted as L 4915/2022.<sup>158</sup> As its title suggests, the law deals with a vast array of issues and is signed by the following ministries: Ministry of Finance, Ministry of Development and Investments, Ministry of Foreign Affairs, Ministry of Defence, Ministry of Education and Religious Affairs, Ministry of Labour and Social Affairs, Ministry of Health, Ministry of Environment and Energy, Ministry of Citizen Protection, Ministry of Culture and Sports, Ministry of Justice, Ministry of Interior, Ministry of Migration and Asylum, Ministry of Infrastructure and Transport, Ministry of Maritime Affairs and Island Policy, Ministry of Agricultural Development and Food, Ministry of Tourism, Ministry of Climate Change and Civil Protection.
- 46.2. The bill "Provisions for the simplification of environmental licensing, establishment of a framework for the development of Offshore Wind Farms, addressing the energy crisis, environmental protection and other provisions", adopted as L 4964/2022.<sup>159</sup> Despite the seemingly short and specific title, the bill in question contains provisions from the following ministries: Ministry of Finance, Ministry of Development and Investments,

<sup>157</sup> L 4622/2019.

<sup>158</sup> Hellenic Parliament, Εθνικό Στρατηγικό Σχέδιο Καταπολέμησης της Διαφθοράς, διατάξεις για θέματα ανθρώπινου δυναμικού και Οργανισμών Τοπικής Αυτοδιοίκησης, νομοθετικό πλαίσιο εκπαίδευσης των σπουδαστών/σπουδαστριών της Εθνικής Σχολής Δημόσιας Διοίκησης και Αυτοδιοίκησης για την ένταξη στον κλάδο Π.Ε. Επιτελικών Στελεχών, διατάξεις για την ολοκλήρωση της μεταφοράς των δασικών υπηρεσιών στο Υπουργείο Περιβάλλοντος και Ενέργειας, διατάξεις για την εφαρμογή του Εθνικού Σχεδίου Ανάκαμψης και Ανθεκτικότητας «Ελλάδα 2.0», Εθνική Σύμβαση Ομογενών και άλλες επείγουσες διατάξεις, 11 March 2022, <https://bit.ly/3GL6Kxm>.

<sup>159</sup> Hellenic Parliament, Διατάξεις για την απλοποίηση της περιβαλλοντικής αδειοδότησης, θέσπιση πλαισίου για την ανάπτυξη των Υπεράκτιων Αιολικών Πάρκων, την αντιμετώπιση της ενεργειακής κρίσης, την προστασία του περιβάλλοντος και λοιπές διατάξεις, 22 July 2022, <https://bit.ly/3il7XCa>.

Ministry of Foreign Affairs, Ministry of Defence, Ministry of Education and Religious Affairs, Ministry of Labour and Social Affairs, Ministry of Health, Ministry of Environment and Energy, Ministry of Citizen Protection, Ministry of Culture and Sports, Ministry of Justice, Ministry of Interior, Ministry of Migration and Asylum, Ministry of Infrastructure and Transport, Ministry of Maritime Affairs and Island Policy, Ministry of Agricultural Development and Food, Ministry of Tourism, Ministry of Climate Change and Civil Protection.

- 46.3. The bill "Corporate governance of Public Limited Companies and other subsidiaries of the Hellenic Holding and Property Company, management of public shareholdings in public limited companies and regulations for the Hellenic Holding and Property Company, assessment of the solvency and creditworthiness of natural and legal persons vis-à-vis the State and the establishment of an Independent Authority for Credit Assessment, establishment and operation of a Central Credit Registry, Supplementary State Budget for the financial year 2022 and other provisions of an economic and developmental nature", adopted as L 4972/2022.<sup>160</sup> Similar to the examples provided above, the law in question contains provisions from virtually all Greek ministries.
- 46.4. The bill on "Comprehensive system for palliative care provision, Provisions on addressing the COVID-19 pandemic and the protection of public health and other urgent provisions", adopted as L 5007/2022, containing – beyond provisions relating to its title – provisions from on development and environmental protection, migration, agricultural development and finance.
47. **Last-minute amendments & consistent failure to record them as "overdue"**: The Greek government continues to undermine the quality of the country's legislative process as Ministries continue to systematically include last-minute unrelated amendments in bills previously approved by the Council of Ministers itself.<sup>161</sup> Vouliwatch research shows that the Parliament fails to stamp dozens of ministerial amendments as "overdue" (*εκπρόθεσμες*), even though they are submitted at the last minute, in contravention of both the Constitution and the Rules of Procedure of the Parliament.
48. In the aim of good and transparent law-making, Article 74(5) of the Constitution and Articles 88-89 and 101(5) of the Rules of Procedure of the Parliament provide that ministerial amendments to proposed bills must be submitted no later than three days before the opening of the debate in the Plenary or the competent parliamentary committee. Late submissions cannot be introduced for discussion or voting in Parliament. The purpose of the above rules is to allow enough time for appropriate consultation and legislative process, including input both from MPs and from the public on any provisions proposed by ministers in the form of amendments. The prohibition of last-minute amendments prevents the submission – shortly before the passing of the bill – of provisions that would inevitably evade public scrutiny and would result in a lack of

<sup>160</sup> Hellenic Parliament, *Εταιρική διακυβέρνηση των Ανωνύμων Εταιρειών του Δημοσίου και των λοιπών θυγατρικών της Ελληνικής Εταιρείας Συμμετοχών και Περιουσίας, διαχείριση συμμετοχών του Δημοσίου σε ανώνυμες εταιρείες και ρυθμίσεις για την Ελληνική Εταιρεία Συμμετοχών και Περιουσίας, αξιολόγηση της έναντι του Δημοσίου φερεγγυότητας και πιστοληπτικής ικανότητας φυσικών και νομικών προσώπων και σύσταση Ανεξάρτητης Αρχής Πιστοληπτικής Αξιολόγησης, ίδρυση και λειτουργία Κεντρικού Μητρώου Πιστώσεων, Συμπληρωματικός Κρατικός Προϋπολογισμός οικονομικού έτους 2022 και λοιπές διατάξεις οικονομικού και αναπτυξιακού χαρακτήρα*, 13 September 2022, <https://bit.ly/3vJ4BMn>.

<sup>161</sup> Vouliwatch, 'Αδιαφάνεια και ασυνέπεια από τη Βουλή στο ζήτημα των εκπρόθεσμων τροπολογιών', 30 November 2021, <https://bit.ly/3OsKwCr>.

transparency and accountability on issues that affect individual rights, public procurement and other issues of public interest.

49. Despite the importance of these rules for democracy and the rule of law, the government submitted a large number of last-minutes amendments in 2022. According to Vouliwatch research, a total of 131 bills were submitted in Parliament from January to December 2022. These contained 152 amendments, of which 75 (49%) were unlawfully submitted as “overdue amendments”, while 81 of those (53%) were irrelevant to the context of the bills. In this analysis, Vouliwatch followed the most moderate parliamentary method for defining amendments as “overdue” and determined as such only those submitted on the day of or preceding the voting of the relevant bill. Had Vouliwatch applied the letter of the law and considered as overdue the amendments that were not tabled at least three days before the beginning of the debate, then the percentage of overdue amendments would have been much higher.
50. Despite the widespread use of submission of last-minute amendments, Parliament has a transparency mechanism to highlight this unconstitutional practice. This rule stipulates that the documents relating to the amendment that are posted on the parliament's website are accompanied by an “OVERDUE” stamp, so that citizens can easily see when an amendment was tabled, and ultimately passed, in violation of the law. By making this clear to the public, the correct and consistent labelling of overdue amendments could act as a deterrent, as ministers are called to account for their unconstitutional practices to citizens and to the opposition. However, instead of strengthening the application of such rules of transparency and accountability in cases where Parliament and the government do not legislate in accordance with the law, Vouliwatch's study of the amendments concluded that Parliament does not consistently apply this simple transparency mechanism. Indeed, the Parliament, for reasons unknown, has practically stopped stamping a large number of late amendments. Research conducted by Vouliwatch shows that 74 of the 75 overdue amendments submitted in 2022 did not bear the “OVERDUE” stamp.
51. It is worth noting that the failure to stamp overdue amendments as such is an instance of lack of transparency that appears increasingly over time in the legislative work of the current government. Vouliwatch research shows that in the second half of 2019, after the change of government that resulted from the elections, all overdue amendments were stamped as “OVERDUE”. This transparency practice of stamping overdue amendments as such began to show signs of inconsistency in the first months of 2020, during which we identified eight overdue amendments without the relevant label. The number grew to 52 in just the first nine months of 2021. This practice is a blow to the transparent operation of Parliament, giving citizens the false impression that most ministerial amendments are submitted in a timely and lawful manner.
52. Examples of last-minute unrelated amendments during the reporting period include the following:
  - 52.1. L 4947/2022 on transposition of Directive (EU) 2019/713 includes unrelated amendments, including changes to the operation of the Appeals Authority under the Ministry of Migration and Asylum.
  - 52.2. L 4960/2022 on guardianship of unaccompanied children includes an entire Part D on “other provisions of the Ministry of Migration and Asylum”. These result from the Ministry's own last-minute amendments to bill relating *inter alia* to expenses and to the establishment of a Fundamental Rights Officer (FRO) and a Special Commission on Fundamental Rights Compliance within the Ministry of Migration and Asylum. Both entities directly involve the

Ombudsman and National Commission for Human Rights, as detailed below (see [Other: Rule of Law Culture](#)). However, the Ombudsman has particularly criticised the fact that he was only informed of the reform when the amendment was tabled, one day prior to the adoption of the bill.<sup>162</sup>

- 52.3. L 4985/2022 on prisons contains an entire Chapter 17 titled “Other urgent provisions of the Ministries of Citizen Protection, Digital Governance and Defence”, none of which relates to the scope and content of the instrument. Article 77 L 4985/2022 sets out a derogation from public procurement rules regarding the extension of a fence on the Evros land border (see [Anti-Corruption: Prevention](#)).

**53. Improper and deficient use of codification exercises:** The government has circumvented consultation and parliamentary scrutiny procedures by introducing significant new measures and amendments to legislation in the form of codification exercises.

- 53.1. The draft Asylum Code, enacted on 10 June 2022 as L 4939/2022, was unexpectedly tabled by the Ministry of Migration and Asylum on 2 June 2022 without prior public consultation. Though it was presented as a codification exercise and was thereby presented in truncated procedures, the bill involved several substantive amendments to asylum legislation, including changes to the authorities responsible for temporary protection. Concerns from opposition MPs during the parliamentary committee examination were not taken into consideration.

- 53.2. Concerns were also levelled against the draft Asylum Code for leaving out core parts of relevant legislation such as the entire section of L 4375/2016 dedicated to the Asylum Service and Appeals Authority. Not only were these concerns disregarded ahead of the adoption of the bill, but further amendments have since been made to both instruments. L 4375/2016 was amended two weeks later by L 4947/2022, an unrelated instrument, while L 4939/2022 was modified by L 4960/2022 one month later.

**54. Disregard of better law-making principles:** The Greek government and Parliament do not comply with law-making safeguards such as Article 59(3) of the Executive State Act, which prohibits the legislature from enacting (a) references to unspecified provisions, (b) derogations from established or recent provisions for no specific reason. For example, Article 77 L 4985/2022 sets out a derogation from public procurement rules regarding the extension of a fence on the Evros land border. Circumvention of those rules is allowed irrespective of budget and “by way of derogation from any national, general or specific provision” (see [Anti-Corruption: Prevention](#)).

**55. Failure to adopt delegated acts:** Several legislative instruments delegate the definition of rules or procedures to Presidential Decrees or Ministerial Decisions. In many areas, however, the Greek government still fails to issue such acts, thereby hindering the application of legislative standards. Examples include the following:

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<sup>162</sup> Ombudsman, ‘Articles 49 & 50 L 4960/2022’, 42673/2022, 29 July 2022, <https://bit.ly/3ODTrkF>.



- 55.1. According L 4786/2021 adopted in March 2021,<sup>163</sup> the Greek government is required to create a digital archive for ADAE to enable it to monitor which citizens EYP has placed under surveillance and to assess whether the legal framework on privacy of communications is complied with. Almost two years later, however, the Ministries of Justice and Digital Governance have still not issued the Joint Ministerial Decision needed to establish the digital archive of ADAE.<sup>164</sup> Due to this, ADAE only has a paper-form archive which renders it impossible for the Authority to scrutinise EYP compliance with legal standards and to shed light on surveillance, as derived from Article 19(2) of the Constitution (see [Surveillance](#)).
- 55.2. Nearly seven years since the enactment of L 4375/2016, the government has still not issued a Presidential Decree on statelessness determination procedures.<sup>165</sup> As a result, stateless persons are deprived of their real status, of a passport and of essential rights, including favourable provisions on access to citizenship, despite Greece's obligations under the 1954 Convention relating to the Status of Statelessness Persons.
- 55.3. Nearly four years since the enactment of L 4604/2019, there has been no new Ministerial Decision to allow second-generation children with a certified disability over 80% to gain access to citizenship.<sup>166</sup> Greece thereby fails to fulfil its commitments derived from the UN Convention on the Rights of Persons with Disabilities.<sup>167</sup>

**COVID-19: update on significant developments with regard to emergency regimes in the context of the COVID-19 pandemic**

56. **Discriminatory quarantine of refugees:** Throughout 2022, Greece has continued to subject newly arriving asylum seekers to several days of quarantine in Reception and Identification Centres, Closed Controlled Access Centres and other reception facilities throughout its territory, citing COVID-19 prevention reasons.<sup>168</sup> There was no permanent presence of staff in quarantine sites, even for emergency cases.<sup>169</sup> The policy had no basis insofar as all other movement restrictions previously imposed in light of the pandemic had been lifted for the remainder of the population. Furthermore, the authorities still refrained from notifying deprivation of liberty orders in the form of administrative decisions to the persons affected.<sup>170</sup>
57. **Discriminatory COVID-19 fines on refugees:** Administrative fines of 5,000 € were regularly imposed against new arrivals on Chios and Kos islands during the COVID-19 pandemic. The Coast Guard of Chios fined asylum seekers for violating the COVID-19 entry protocol at least since August 2021, based on COVID-19 regulations.<sup>171</sup> Appeals against such fines are currently pending before the Administrative Court of Mytilene, territorially competent for the island of Chios (*μεταβατική έδρα*). The Court has granted suspensive

<sup>163</sup> Article 5(12) L 2225/1994, as inserted by Article 37 L 4786/2021.

<sup>164</sup> Reporters United, 'Το μυστικό κρύβεται στο αρχείο: Ο βρόμικος πόλεμος του Μαξίμου κατά της ΑΔΑΕ', 29 December 2022, <https://bit.ly/3WhdjfC>.

<sup>165</sup> Article 7(7) L 4375/2016.

<sup>166</sup> Articles 1A and 1B Citizenship Code, L 3284/2004.

<sup>167</sup> Particularly Articles 7, 9, 11 and 18 L 4074/2012.

<sup>168</sup> Annex II JMD Δ1α/ΓΠ.οικ. 66528/2022, Gov. Gazette B' 5874/19.11.2022.

<sup>169</sup> Médecins Sans Frontières, 'Closed centres for refugees arriving on the Greek islands: one year later, "everyone is suffering from psychological distress"', 30 November 2022, <https://bit.ly/3H9e4D5>.

<sup>170</sup> RSA et al., *The state of the border procedure on the Greek islands*, September 2022, 27, <https://bit.ly/3EPP6aG>.

<sup>171</sup> For analysis, RSA et al., *The State of the Border Procedure on the Greek Islands*, September 2022, 30-31.

effect in some cases,<sup>172</sup> but has refused to do in others, stating that “regardless of the nature and scale of harm of the applicants... urgent public interest grounds require the immediate and timely execution of the contested decisions.”<sup>173</sup>

## B. Independent authorities

Independence, resources, capacity and powers of national human rights institutions ('NHRIs'), of ombudsman institutions if different from NHRIs, of equality bodies if different from NHRIs and of supreme audit institutions

58. Article 101A(2) of the Constitution provides that candidate members of independent authorities are appointed by the Conference of Presidents of the Parliament on the basis of a supermajority (3/5) vote. The Constitution expressly cites independent authorities such as the Ombudsman, the Authority for Communication Security and Privacy, and the Data Protection Authority. This does not include the National Transparency Authority.

*National Transparency Authority (Εθνική Αρχή Διαφάνειας, NTA)*

59. **Lack of independence:** Since the NTA is not included in the authorities expressly mentioned in the Constitution, the supermajority vote guarantees of Article 101A(2) of the Constitution are not applied. The legal basis of the NTA in the Executive State Act foresees that candidates for the positions of Director and Management Board members of NTA are proposed by the Council of Ministers and are approved by simple majority vote of the Institutions and Transparency Committee of the Parliament.<sup>174</sup> This means that a party holding a majority of seats in Parliament may approve a candidate solely through its own votes in the Committee. Accordingly, the selection procedure not only falls short of the institutional requirements set by the Constitution for independent authorities but also raises risks of political dependency of the NTA on the government. These particular concerns were raised by opposition MPs during the Institutions and Transparency Committee meeting of 6 September 2019, which approved the appointment of the first Director of NTA solely on votes of the ruling party, New Democracy.<sup>175</sup>
60. **Mandate and expertise:** From 2019 until the end of 2021, the majority of complaints received and inspections made by the NTA related to maladministration by regional and local authorities, health care services, issues related to award of pensions and other social security forms, as well as the application of COVID-19 prevention measures. For example, most complaints submitted to the NTA concerned the functioning and services of municipal authorities (36.9%) in 2019,<sup>176</sup> pensions and other social security and welfare rights (23.5%) in 2020, while most audit orders that year concerned the health and social care sector (36.5%),<sup>177</sup> and social security and labour (18.5%) and health and social care (15.8%) in 2021.<sup>178</sup> Based on its mandate and the type of cases handled, the NTA is not an authority specialised or experienced in border management, asylum and return, monitoring of security structures or investigation of law enforcement bodies such as the Hellenic Police and Hellenic Coast Guard. As has been recently stated by the UN Special Rapporteur on human rights defenders, the

<sup>172</sup> Administrative Court of Mytilene, 25/2022 and 26/2022, 26 August 2022.

<sup>173</sup> Administrative Court of Mytilene, 12/2022, 15 March 2022, para 7.

<sup>174</sup> Articles 88(2) and 90(2) Executive State Act.

<sup>175</sup> Hellenic Parliament, *Institutions and Transparency Committee: Ακρόαση, από τα μέλη της Επιτροπής, του προταθέντος, από το Υπουργικό Συμβούλιο, για τη θέση Διοικητή της Εθνικής Αρχής Διαφάνειας, με διετή θητεία*, 6 September 2019, <https://bit.ly/3sHofbg>.

<sup>176</sup> NTA, *Annual Report 2019*, 25 June 2020, 43, 46, <https://bit.ly/3GLQOeq>.

<sup>177</sup> NTA, *Annual Report 2020*, 29 June 2021, 64, <https://bit.ly/3VRSEP8>.

<sup>178</sup> NTA, *Annual Report 2021*, 1 August 2022, 65, <https://bit.ly/3Z8rkPk>.

NTA “is not equipped to conduct independent investigations into the management of migration flows”.<sup>179</sup>

61. However, the Greek government has entrusted NTA with a wide set of tasks affecting core elements of the rule of law, ranging from investigation into the use of illegal spyware and wiretapping<sup>180</sup> to investigation of push back incidents against refugees and migrants.<sup>181</sup> Following a last-minute amendment in July 2022, L 4960/2022 has appointed the NTA as the competent authority for receiving complaints of fundamental rights violations in reception of third-country nationals and asylum procedures by the Fundamental Rights Officer of the Ministry of Migration and Asylum (see [Other: Rule of Law Culture](#)).<sup>182</sup> It is worth highlighting that the NTA website only allows for submission of complaints in Greek.<sup>183</sup>

62. **Lack of effectiveness of investigations:** Practice thus far demonstrates that NTA investigations do not comply with well-established requirements of effectiveness, namely independence and impartiality, thoroughness and victim involvement:<sup>184</sup>

62.1. **Investigation of use of illegal spyware:** Following the outbreak of the surveillance scandal in Greece,<sup>185</sup> the NTA was tasked in April 2022 with the investigation into the illegal use of Predator spyware in the country. After a three-month investigation, the Authority announced that all the actions of the Greek security services were in accordance with the law and that there

<sup>179</sup> UN Special Rapporteur on human rights defenders, ‘Statement on preliminary observations and recommendations following official visit to Greece’, 22 June 2022, <https://bit.ly/3tSwZLB>. See also UNHCR, OHCHR, ENNHRI, *Ten points to guide the establishment of an independent and effective national border monitoring mechanism in Greece*, 9 September 2021, <https://bit.ly/3lulsvs>: “Ensure that those entrusted with monitoring fundamental rights at borders have thorough institutional experience in international human rights law, EU fundamental rights law and in fundamental rights as guaranteed by the Greek Constitution and national legislation as well as on evolving international, European and national case law interpreting such law. Institutional experience in asylum, border management and return as well as practical experience in human rights monitoring and in working with law enforcement actors are additional assets which facilitate a successful functioning of the monitoring mechanism.”

<sup>180</sup> Govwatch, ‘Questions raised by government’s choice of agency to lead investigation into the surveillance of journalist’, 25 May 2022, <https://bit.ly/3WSsrRE>.

<sup>181</sup> News 24/7, ‘Μηταράκης: Αίτημα στην Εθνική Αρχή Διαφάνειας για τις καταγγελίες περί επαναπροωθήσεων μεταναστών’, 27 October 2021, <https://bit.ly/3XsEipJ>. This should be assessed in light of UNHCR, OHCHR, ENNHRI, *Ten points to guide the establishment of an independent and effective national border monitoring mechanism in Greece*, 9 September 2021, <https://bit.ly/3lulsvs>: “Ensure that those entrusted with monitoring fundamental rights at borders have thorough institutional experience in international human rights law, EU fundamental rights law and in fundamental rights as guaranteed by the Greek Constitution and national legislation as well as on evolving international, European and national case law interpreting such law. Institutional experience in asylum, border management and return as well as practical experience in human rights monitoring and in working with law enforcement actors are additional assets which facilitate a successful functioning of the monitoring mechanism.”

<sup>182</sup> Article 49 L 4960/2022.

<sup>183</sup> The English version of the website redirects to the Greek version when the “Complaint” entry is selected. Frequently Asked Questions, last updated on 23 November 2020, are also only available in Greek.

<sup>184</sup> ECtHR, *Khodyukevich v. Russian Federation* App No 74282/11, 28 August 2018; *Tunc v. Turkey* App No 24014/05, 14 April 2015; *Bati v. Turkey* App Nos 33097/96 and 57834/00, 3 June 2004.

<sup>185</sup> Inside Story, ‘Ποιος παρακολουθούσε το κινητό του δημοσιογράφου Θανάση Κουκάκη’, 11 April 2022, <https://bit.ly/3CCa0J2>; Reporters United, ‘Έχθρος του Κράτους: Αποδεικνύουμε ότι η κυβέρνηση Μητσοτάκη παρακολουθούσε τον δημοσιογράφο Θανάση Κουκάκη’, 15 April 2022, <https://bit.ly/3CyQJrO>.

was no breach of Greek or European legislation. It added that the Greek security services did not use the illegal Predator spyware (see [Surveillance](#)).

62.2. However, there is evidence that the NTA did not conduct its investigation in an appropriate manner. First, the PredatorGate scandal concerns surveillance cases, investigation of which comes under the mandate of ADAE and not the NTA. The competences of the latter, as defined in the Executive State Act, do not in any way cover the investigation of surveillance cases such as those related to the PredatorGate scandal.<sup>186</sup> Furthermore, during its investigation, the NTA did not investigate the bank accounts of the private companies linked to the surveillance scandal, some of which appear to be connected to the Greek security services. The NTA did not check which foreign companies have been dealing with Greek-based Intellexa, the company that trades Predator. The Authority was also very late in carrying out an on-site inspection at Intellexa's offices, as the inspection team visited the company on 9 June 2022, almost two months after the launch of the investigation.<sup>187</sup> As for Intellexa, Hermes Technologies, Apollo Technologies and Ferovento Limited, companies allegedly involved in the surveillance scandal, the NTA examined tax data of their customers and suppliers only for 2020 and not for 2021, despite the fact that 2021 is a crucial year for the case; MEP Nikos Androulakis, MP Christos Spirtzis and journalist Thanasis Koukakis were targeted with Predator in 2021. Therefore, for a long time the companies were left unaudited.

62.3. **Investigation of push backs against refugees and migrants:** In May 2022, NTA released an investigation report following the referral of a case by the Minister of Migration and Asylum in response to Lighthouse Report material on push backs against refugees and migrants by Greece. The investigation was carried out from November 2021 to March 2022. Both the contents and process of publication of the report were marred by serious deficiencies.<sup>188</sup> On the one hand, the investigation's stated aims were *inter alia* "To reflect the view of local communities on how irregular migration is managed by the relevant national bodies" and to record "the view of the local community on allegations of pushbacks".<sup>189</sup> On the other hand, due to NTA's own failure to correctly anonymise data in the report, the personal details of persons interviewed as part of the investigation were made public. Out of 65 persons interviewed for the purposes of the investigation, the Authority spoke to 21 locals working mostly in shipping and fisheries or members of local business associations,<sup>190</sup> ten religious leaders, only one lawyer and one NGO offering medical services, zero victims and zero representatives of UN agencies, the Ombudsman or the National Commission for Human Rights. 29 interviewees were Greek officials,<sup>191</sup> i.e. alleged perpetrators of the actions investigated. Finally, for the purpose of examining audio-visual material submitted by the Lighthouse Report

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<sup>186</sup> Reporters United, 'Συγκάλυψη #2: Πώς η κυβέρνηση Μητσοτάκη προσπαθεί (ξανά) να κλείσει την υπόθεση Κουκάκη', 21 April 2022, <https://bit.ly/3LCYNcU>.

<sup>187</sup> Inside Story, 'Από τον Κουκάκη στον Ανδρουλάκη: Νέα τροπή στην υπόθεση του spyware Predator', 27 July 2022, <https://bit.ly/3ID1AEP>.

<sup>188</sup> RSA et al., *Systemic breaches of the rule of law and of the EU asylum acquis at Greece's land and sea borders*, June 2022, <https://bit.ly/3Ay3wd4>.

<sup>189</sup> EAD, *Investigation Report OM3/4: Management of immigration flows – Allegations of pushbacks in Greece*, March 2022, 9, <https://bit.ly/38CREfj>.

<sup>190</sup> *Ibid*, 10, fn. 10: "specially for citizens, it was preceded by a search on the internet using criteria mainly of professional status but also of voluntary or professional action against irregular migrants (e.g. traders, entrepreneurs, fishermen, rescuers, etc.)"

<sup>191</sup> *Ibid*, 39-44. 26 of those were Hellenic Police and Hellenic Coast Guard officers.

platform, NTA “requested the assistance of the Hellenic Police Forensic Science Division (in Greek: DEE) in examining the data provided (16 videos and 7 photographs)”<sup>192</sup> in relation to allegations *inter alia* of push backs conducted by Hellenic Police officers themselves.

62.4. The NTA concluded that “there were no discrepancies in the actions of the competent bodies in the exercise of their powers. There has been documented the establishment of a solid standardized process including a strict protocol of steps and co-ordinated actions, depending on the geographical spot where irregular migration flows are detected, and in particular whether the migration flows are detected within or outside national borders... In every incident of detection of irregular immigrants, the legal provisions are respected throughout the entire operation, as provided by the national, international and European law.”<sup>193</sup> The report adds that “it has not been possible to verify the incidents stated in this publication/report, as no supporting evidence or relevant documentation has emerged.”<sup>194</sup> The report not only presents glaring discrepancies with all other relevant materials, reports and findings of international and domestic human rights bodies, but also appears rather to depict an opinion poll than an effective, impartial inquiry into push back allegations. For example, it states that the majority of interviewees “are convinced that such incidents do not occur and cannot occur”, presenting opinions such as “Greece would not risk to be ‘exposed’ and such unlawful practices are incompatible with the ‘mentality’ of the Greek people”.<sup>195</sup> These views have striking similarities to the position held by Greek authorities in the *Safi v. Greece* case, where the Public Prosecutor held that Greece does not conduct push backs. We recall that the ECtHR found Greece to have breached its procedural obligations under Article 2 ECHR in *Safi* (see [Justice: Independence](#)).

62.5. In response to the NTA report, the European Commission has only stated it is “aware of the conclusions of the first investigation implemented by the National Transparency Authority” and that it holds regular meetings with the national authorities to provide feedback on monitoring arrangements, without commenting on NTA compliance with effectiveness standards.<sup>196</sup> No tangible changes have been marked vis-à-vis the serious concerns relating to the lack of independence and effectiveness of NTA investigations into push backs to date.

63. **Lack of transparency and access to information:** Contrary to a January 2022 ruling from the Administrative Court of Appeal of Athens,<sup>197</sup> the NTA has insisted that Vouliwatch lacks sufficient reasonable interest to request data on the non-transparent allocation of state advertising, while at the same time claiming that the information requested is protected by trade secrecy.<sup>198</sup> It is worth mentioning that the NTA’s stance on this particular matter was heavily criticised by the International Press Institute, which on the 21 June 2022 issued a statement expressing its “serious concern over the recent decision by Greece’s National Transparency Authority (NTA) to continue to block the release of information about the politically-motivated allocation of state advertising

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<sup>192</sup> *Ibid*, 34.

<sup>193</sup> *Ibid*, 36.

<sup>194</sup> *Ibid*, 37.

<sup>195</sup> *Ibid*, 35.

<sup>196</sup> European Commission, Reply to written question E-1519/2022, 3 August 2022; Reply to written question E-1438/2022, 10 June 2022.

<sup>197</sup> Administrative Court of Appeal of Athens, Decision 56/2022, 20 January 2022.

<sup>198</sup> Vouliwatch, ‘Υπόθεση Λίστας Πέτσα: Μια απρόσμενη απόφαση της ΕΑΔ μετά τη δικαστική μας δικαίωση’, 14 June 2022, <https://bit.ly/3ltBlev>.



funding to the media during the first wave of the COVID-19 pandemic".<sup>199</sup> Following the NTA decision, which is legally unsound and obstructs the right to information, Vouliwatch proceeded to a judicial review application before the Administrative Court of Appeal of Athens on 20 October 2022, requesting the annulment of said decision of the NTA. In its application, Vouliwatch claims that the NTA violated the decision of the Administrative Court of Appeal of Athens and that the appeal to trade secrecy is neither legally substantiated nor justifiable, given that the documents requested by Vouliwatch are not in the possession of the NTA for the Authority to assess whether trade secrecy applies.<sup>200</sup>

#### *Ombudsman (Συνήγορος του Πολίτη) – Article 103(9) Constitution*

64. **Disregard of Ombudsman recommendations:** The Greek government continues not to comply with Ombudsman interventions and recommendations on the implementation of EU and domestic legal standards on the treatment of refugees and migrants. Examples during the reporting period include access to asylum procedures,<sup>201</sup> the use of the "safe third country" concept in asylum procedures,<sup>202</sup> the issuance of identity documents to refugees,<sup>203</sup> and the treatment of shipwreck survivors.<sup>204</sup>

#### *Hellenic Authority for Communication Security and Privacy (Αρχή Διασφάλισης του Απορρήτου των Επικοινωνιών, ADAE) – Article 19(2) Constitution*

65. **Obstruction of ADAE functions & contestation of constitutional mandate:** In a December 2022 announcement, ADAE clarified that it continues to conduct checks relating to the lifting of privacy of telecommunications following the entry into force of L 5002/2022 (see [Surveillance](#)), in line with its mandate.<sup>205</sup> This followed an on-site visit to the premises of Cosmote, one of the main telecommunications providers in Greece, who contacted the Supreme Court Prosecutor to inquire into the powers of the independent authority to conduct checks in light of L 5002/2022. Subsequent reports cited pressure from the Prime Minister's office on Vodafone and Wind, two main telecommunications providers, not to cooperate with ADAE checks on the ground that such controls would contravene L 5002/2022.<sup>206</sup> ADAE established an investigating team at the end of 2022, with the aim of carrying out on-site checks of telecommunications providers throughout Greece in order to verify whether decisions have been issued for the lifting of privacy of communications of four persons.<sup>207</sup>
66. In an escalation of the institutional crisis, the Supreme Court Prosecutor subsequently issued a highly contested opinion in January 2023, claiming that ADAE no longer has competence to carry out investigations into surveillance following the entry into force of L 5002/2022, and warning ADAE members of criminal responsibility if the provisions are not complied with.<sup>208</sup> The Head of ADAE responded, recalling that ADAE is an independent authority and that the Supreme Court Prosecutor has no power to issue

<sup>199</sup> International Press Institute, 'Greece: Transparency authority must comply with court ruling on media advertising campaign', 21 June 2022, <https://bit.ly/3Qs6dDI>.

<sup>200</sup> Vouliwatch, 'Υπόθεση Λίστας Πέτσα - ΝΕΑ προσφυγή του Vouliwatch στη Δικαιοσύνη', 21 October 2022, <https://bit.ly/3VYdmwQ>.

<sup>201</sup> Ombudsman, Letter No 322987/49662/2022, 12 September 2022.

<sup>202</sup> Ombudsman, Letter No 290565/32245/2022, 10 June 2022.

<sup>203</sup> Ombudsman, Letter No 323643/323211/2022, 26 September 2022.

<sup>204</sup> Ombudsman, Letter No 320954/39576/2022, 14 July 2022; Letter No 311527/21917/2022, 20 April 2022; Letter No 311575/22138/2022, 21 April 2022.

<sup>205</sup> ADAE, 'Δελτίο τύπου του Προέδρου της ΑΔΑΕ', 16 December 2022, <https://bit.ly/3Ct8wkj>.

<sup>206</sup> Efsyn, 'Καταγγέλλουν παρέμβαση Μαξίμου σε Vodafone και Wind για να εμποδιστεί η έρευνα', 24 December 2022, <https://bit.ly/3Gmg6OK>.

<sup>207</sup> Kathimerini, 'Παρακολουθήσεις: Ειδική ομάδα ελέγχου συστήνει η ΑΔΑΕ', 4 January 2023, <https://bit.ly/3CuENXZ>.

<sup>208</sup> Supreme Court Prosecutor, Opinion 1/2023, 10 January 2023.

opinions on the performance of its functions, that opinions cannot be issued on investigations that are already underway, and that L 5002/2022 in no way limits the constitutionally established competences and powers of ADAE.<sup>209</sup> Equally sharp criticism has been levelled against the opinion by the Bar Associations of Athens, Thessaloniki, Piraeus and Larissa,<sup>210</sup> and by sixteen renowned Greek legal scholars, denouncing conflation of the scrutiny competences of ADAE with individuals' right to be informed of surveillance under L 5002/2022, and reminding that ADAE is required to scrutinise EYP under the Constitution.<sup>211</sup>

### C. The enabling framework for civil society

67. As noted in a June 2022 statement of the UN Special Rapporteur on human rights defenders, "Defenders in the country working to ensure the rights of refugees, asylum seekers and migrants are respected, are currently under severe pressure." The Special Rapporteur referred to Greek policy as putting "suffocating pressure" on civil society, whilst "the climate of fear and insecurity created by this policy was reinforced by elements of the legal framework, in particular the discriminatory NGO Registry for organisations working on migration, and statements from high-ranking Government representatives attacking and undermining the work of human rights NGOs."<sup>212</sup>
68. Similar concerns were reiterated by the Council of Europe Commissioner for Human Rights in January 2023: "Smear campaigns targeting individuals defending human rights, cumbersome NGO registration procedures and undue pressure on journalists have undermined the protection of human rights and shrunk the civic space in the country. The ongoing criminalisation of individuals assisting refugees, asylum seekers and migrants, as well as activists defending and promoting human rights in Greece, is part of this trend..."<sup>213</sup>
69. **Arbitrary & discriminatory registration requirements for NGOs working with refugees and migrants:** Greece has yet to remedy the serious concerns raised by UN and Council of Europe bodies as to the legality of Greek registration requirements for NGOs and individuals working with refugees and migrants, enacted in 2020.<sup>214</sup> No action has been

<sup>209</sup> ADAE, 'Δήλωση του Προέδρου της ΑΔΑΕ Χρήστου Ράμμου για την Γνωμοδότηση 1/10879/10.1.2023 του Εισαγγελέως του Αρείου Πάγου κ. Ισίδωρου Ντογιάκου (10/1/2023)', 10 January 2023, <https://bit.ly/3kcX85T>.

<sup>210</sup> Bar Association of Athens, 'Απόφαση του Διοικητικού Συμβουλίου του ΔΣΑ για τη Γνωμοδότηση του Εισαγγελέα του Αρείου Πάγου σχετικά με την άσκηση των ελεγκτικών αρμοδιοτήτων της ΑΔΑΕ', 12 January 2023, <https://bit.ly/3H2WJMH>; Bar Association of Thessaloniki, 'Ψήφισμα Δ.Σ.Θ. για τη Γνωμοδότηση του Εισαγγελέα του Αρείου Πάγου', 14 January 2023, <https://bit.ly/3CYHUaO>; Bar Association of Piraeus, 'Απόφαση Δ.Σ.Π. για τις ελεγκτικές αρμοδιότητες της ΑΔΑΕ', 13 January 2023, <https://bit.ly/3GKJaPW>; Bar Association of Larissa, 'Ανακοίνωση του Δ.Σ. του Δ.Σ.Λ. αναφορικά με την υπ' αριθμ. 1/2023 Γνωμοδότηση του κ. Εισαγγελέα του Α.Π.', 13 January 2023, <https://bit.ly/3HiA26Y>.

<sup>211</sup> Ethnos, '16 Συνταγματολόγοι κατά γνωμοδότησης Ντογιάκου: «Υπάρχουν σοβαρά αποστήματα»', 12 January 2023, <https://bit.ly/3Clpxa3>.

<sup>212</sup> UN Special Rapporteur on human rights defenders, 'Greece: Migration policy having "suffocating effect" on human rights defenders says UN expert', 22 June 2022, <https://bit.ly/3VdAzeh>.

<sup>213</sup> Council of Europe Commissioner for Human Rights, 'Greek authorities should reverse the trend undermining the work of human rights defenders and journalists', 12 January 2023, <https://bit.ly/3w4YnX7>.

<sup>214</sup> JMD 10616/2020, Gov. Gazette B' 3820/09.09.2020. See UN Special Rapporteur on freedom of assembly and association, UN Special Rapporteur on human rights defenders & UN Special Rapporteur on the human rights of migrants, OL GRC 1/2021, 31 March 2021, <https://bit.ly/3pxBMjw>; Council of Europe Commissioner for Human Rights, CommHR/DM/sf 019-2021, 3 May 2021, <https://bit.ly/3FyHFCU>; PACE, *Restrictions on NGO activities in Council of Europe member States*, 15205, 6 January 2021, <https://bit.ly/3eCpcJJ>; Expert Council on NGO Law, *Opinion on the compatibility with European standards of recent*

taken to address the recommendation made by the Commission in the 2022 Rule of Law Report: “Ensure that registration requirements for civil society organisations are proportionate in view of maintaining an open framework for them to operate.” Importantly, the Commission still refrains from sharing its assessment of the conformity of the NGO Registry with EU law, including in response to targeted parliamentary questions.<sup>215</sup>

70. The Council of State hearing of judicial review applications lodged against JMD 10616/2020 (hereafter “NGO Registry Decision”) took place on 2 December 2022. At the hearing, the Greek government argued *inter alia* that the fundamental right to freedom of association should not be applicable to NGOs.<sup>216</sup> The judgment is pending at the time of writing.
71. In a different case regarding the Trade Unions Registry (Γενικό Μητρώο Συνδικαλιστικών Οργανώσεων Εργαζομένων),<sup>217</sup> involving data protection considerations similar to those raised in relation to the NGO Registry Decision, the Council of State found regulations to contravene Article 8 of the EU Charter and the General Data Protection Regulation.<sup>218</sup>
72. In April 2022, the Civil Court of Athens (Μονομελές Πρωτοδικείο Αθηνών) declared the NGO Registry Decision *ultra vires* on the ground that it exceeds the limits of legislative authorisation granted by primary law – Article 191 L 4662/2020 – regarding the NGO Members’ Registry. The Court quashed a redundancy decision regarding an NGO worker, taken for reasons of compliance with the NGO Members’ Registry requirements. The Court held that:

“[T]he legislative authorisation granted to the Minister of Migration and Asylum is specific and clearly circumscribed and concerns the definition of the procedure and documentation for the registration and certification of members, staff and partners of the aforementioned Organisations on the “Registry of Members of Non-governmental Organisations (NGOs)”. However, the above JMD was not limited to the definition of the procedure and documentation for registration and certification but further enacted conditions which members must fulfil for their registration on the “Registry of Members of Non-governmental Organisations (NGOs)” which are neither included in the wording nor can be logically inferred from the aforementioned substantive provisions. The regulation by the JMD of conditions for registration of members on the “Registry of Members of Non-governmental Organisations (NGOs)” contrary to the authorisation provisions of Article 191(1)-(2) L 4662/2020 constitutes an impermissible action of the Administration and contravenes the provisions of Article 43(2) of the Constitution. Accordingly, the aforementioned JMD exceeds the limits of the aforementioned legislative authorisation and insofar as it sets out conditions for registration of members on the “Registry of

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and planned amendments to the Greek legislation on NGO registration, CONF/EXP(2020)4, 2 July 2020, <https://bit.ly/2Zr1l8w>; Addendum, CONF/EXP(2020)5, 23 November 2020, <https://bit.ly/3pZYq1L>; FRA, *Legal environment and space of civil society organisations in supporting fundamental rights – Greece*, January 2021, <https://bit.ly/32Fy8LT>; ECRE, *Concerning the lawfulness of Greek legislation regulating the registration of nongovernmental organisations (NGOs) on the Registry of NGOs working with refugees and migrants in Greece*, December 2021, <https://bit.ly/32FpXz5>.

<sup>215</sup> European Commission, Reply to priority question P-5159/2021, 19 January 2022; Reply to priority question P-5656/2020, 15 January 2021.

<sup>216</sup> RSA, Twitter Post, 2 December 2022, <https://bit.ly/3OWMJGB>.

<sup>217</sup> JMD 62599/2021, Gov. Gazette B' 4279/16.09.2021.

<sup>218</sup> Council of State, Decision 2175/2022, 8 November 2022, <https://bit.ly/3tLfFRI>.

Members of Non-governmental Organisations (NGOs)", including the absence of a final conviction for any criminal offence... is ultra vires and legally void..."<sup>219</sup>

73. The government has taken no action following the above judgment, however. In fact, Article 191 L 4662/2020 has subsequently been incorporated *verbatim* into Article 78 L 4939/2022,<sup>220</sup> while the NGO Registry Decision has remained intact.

74. Furthermore, issues persist with regard to the implementation of the NGO Registry in practice. Contrary to a May 2021 opinion of the Bar Association, per which Greek lawyers cannot be required to individually register on the NGO Members Registry in order to perform their functions and *inter alia* to access public facilities including refugee camps, adopted by the Ministry of Migration and Asylum,<sup>221</sup> facilities such as the Reception and Identification Centre of Evros or the Closed Controlled Access Centre of Lesbos have informed NGO lawyers that they must register on the NGO Members Registry in order to enter the camps in this capacity (see [Justice: Efficiency](#)).

75. **Hostile narrative and incrimination of NGOs and human rights defenders** continues to be adopted by high-ranking government officials, in particular in respect of those who support victims of alleged push backs or at risk thereof. Government representatives describe those actors as colluders with smuggling networks or collaborators of Turkish authorities operating against Greek national interests or acting on concealed political motives. As recently put by the UN Special Rapporteur on human rights defenders, those "targeted by hostile comments, including by key stakeholders in the government... are described as traitors, enemies of the state, Turkish agents, criminals and smugglers and traffickers".<sup>222</sup> It is even the submission of legal remedies, including applications and/or requests for interim measures before the ECtHR, by NGOs that has been used for targeting against them.

75.1. In a June 2022 speech before the Civil Liberties, Justice and Home Affairs (LIBE) Committee of the European Parliament, the Minister of Migration and Asylum stated: "Smuggling networks have devised a new method of circumventing border controls and manipulating the European asylum and justice system. Smugglers abandon groups of migrants on islets created by the seasonal low flow of the Evros river, then they notify specific NGOs which specialize in border-crossing facilitation and these NGOs then notify Greek Authorities and at the same time file with the European Court of Human Rights with the latter reacting by instigating interim measures which of course do not prejudice the merits of any case."<sup>223</sup>

75.2. In an August 2022 speech before the Hellenic Parliament, the Minister of Migration and Asylum stated: "First, the smugglers, or even the Turkish authorities transfer migrants to the Turkish shore and then they move them in the river, before the fence that protects the Greek borders. The collaborating NGOs already have their personal information in detail as well as further supportive material. In order to achieve a positive decision on

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<sup>219</sup> Civil Court of Athens, Decision 427/2022, 29 April 2022, 8-9.

<sup>220</sup> Article 78 L 4939/2022, as amended by Article 44 L 4960/2022.

<sup>221</sup> Bar Association of Athens, Opinion No 166, 5 May 2021; Ministry of Migration and Asylum, Reply to GCR, 131513/2022, 15 July 2021.

<sup>222</sup> UN Special Rapporteur on human rights defenders, 'Greece: Migration policy having "suffocating effect" on human rights defenders says UN expert', 22 June 2022.

<sup>223</sup> Ministry of Migration and Asylum, 'N. Mitarachi: "Greece would expect an even more active role of EU institutions, in calling Turkey to abide by its commitments under the 2016 Joint Statement - we are facing several provocations by Turkey against our sovereign rights, not least inflammatory, revisionist and legally unfounded statements concerning the status of the Aegean islands"', 27 June 2022, <http://bit.ly/3Vtn8al>.

interim measures the 'story' has to include two elements: Risk of stranding and one or more serious health issues. The NGOs appeal before the ECtHR and then international media, where journalists who, according to their statements, are related to the NGOs that file the interim measures, work, give publicity to the incident so that the authorities will go after the fence to find them and bring them to a registration centre."<sup>224</sup>

- 75.3. The Minister of Migration and Asylum has referred to a case brought before the ECtHR regarding 38 refugees in the Evros area as a "communication attack on Greece by NGOs and the Left".<sup>225</sup>
- 75.4. The same Minister has recently stated that "there are only a few NGOs that have entered the Registry. The majority operating during 2015-2019 have left of their own accord."<sup>226</sup> In a December 2022 speech before the Hellenic Parliament, however, the same Minister stated that "There is an embrace of NGOs of unknown funding source with MEPs, with lobbies, with journalists, who systematically circulate abroad images against our country, images which are consistent with what other countries say against Greece, such as Türkiye."<sup>227</sup>
- 75.5. The Deputy Minister of Migration and Asylum has publicly stated: "As a Greek... I will not work with NGOs that undermine the national interest".<sup>228</sup>
76. Derogatory and defamatory language against civil society continues to be routinely used in the Hellenic Parliament. The "Hellenic Solution" political party has recently stated that "it is now evident that there is a plan to conquer Greece through certain NGOs, used and promoted by Türkiye, whose propaganda employs their own or other NGO's false information as 'evidence', with a view to defaming our country by presenting Greece as a 'murderer of migrants' and the trafficking Turkish state as their saviour."<sup>229</sup>
77. **Criminalisation of NGOs and human rights defenders:** As recently put by the UN Special Rapporteur on human rights defenders, "At the tip of the spear are prosecutions, where acts of solidarity are reinterpreted as criminal activity, specifically the crime of people smuggling... The negative impact of such cases is multiplied by smear campaigns perpetuating this false image of defenders".<sup>230</sup> The UN High Commissioner for Human Rights has stressed that "Trials like this are deeply concerning because they criminalize life-saving work and set a dangerous precedent. Indeed, there has already been a

<sup>224</sup> Ministry of Migration and Asylum, 'N. Μηταράκης: "Σημαντικές ανακολουθίες στην υπόθεση των 38 μεταναστών στον Έβρο, θα καταθέσω όλα τα στοιχεία στην Εισαγγελία"', 30 August 2022, <https://bit.ly/3VRvOqA>.

<sup>225</sup> CNN Greece, 'Μηταράκης για τους 38 πρόσφυγες στον Έβρο: Επικοινωνιακή επίθεση στην Ελλάδα από ΜΚΟ και Αριστερά', 27 November 2022, <https://bit.ly/3gDHILY>.

<sup>226</sup> Ministry of Migration and Asylum, 'Μηταράκης: «Η Ελλάδα συνεχίζει να φυλάει αποτελεσματικά τα σύνορά της – Λίγες οι ΜΚΟ στη χώρα μας」', 15 November 2022, <https://bit.ly/3UdlgBA>.

<sup>227</sup> Ministry of Migration and Asylum, 'Μηταράκης από Βουλή: Υπάρχει εναγκαλισμός ΜΚΟ με ευρωβουλευτές και δημοσιογράφους που διακινούν εικόνες εις βάρος της χώρας μας', 14 December 2022, <https://bit.ly/3GK4m9Y>; 'Μηταράκης: Η δουλειά μας στο μεταναστευτικό, βοηθά στα εθνικά θέματα', 16 December 2022, <https://bit.ly/3vJkt1y>.

<sup>228</sup> AFP, 'Migrant groups decry 'witch-hunt' as Greece tightens grip', 20 November 2022, <https://bit.ly/3AQdnKU>.

<sup>229</sup> Hellenic Parliament, Parliamentary question by Hellenic Solution, 6903/2022, 22 August 2022, <https://bit.ly/3UZJ4tl>.

<sup>230</sup> UN Special Rapporteur on human rights defenders, 'Greece: Migration policy having "suffocating effect" on human rights defenders says UN expert', 22 June 2022, <https://bit.ly/3VdAzeh>.



chilling effect, with human rights defenders and humanitarian organisations forced to halt their human rights work in Greece and other EU countries."<sup>231</sup> Current examples include the following:

- 77.1. The most recent incident relates to the founder of the Greek Helsinki Monitor, a well-known Greek NGO founded in 1993 which has repeatedly submitted complaints on alleged push back incidents before the competent Public Prosecutors, the Ombudsman and the Hellenic Police. The founder of the organisation is currently accused of having "set up a criminal organisation with the purpose of receiving data of third country nationals who attempt to enter Greece illegally, in order to facilitate their illegal entry and stay, sending to the authorities their full details and their exact location in the country, in order for them to be subject to asylum procedures". He has been called for interrogation before the Investigating Judge of Kos on 20 December 2022 in response to the above charges, which are classified as felonies. The charges are brought with the aggravating circumstances of commission "by profession, as the infrastructure he has created (namely the operation of the organization Greek Helsinki Monitor) demonstrates an intention of repeated commission of the act and for profit". As noted in a Joint Statement of twelve civil society organisations, the incident on which the criminal prosecution is based refers to the entry into Greece of an asylum seeker, where the founder of the Greek Helsinki Monitor had acted in line with the mandate of the organisation – namely the support of human rights – by sending the Greek authorities information about the presence of asylum seekers on Greek territory, as well as the intention of those asylum seekers to be subject to asylum procedures, i.e. by asking for their protection claims to be registered and for applicable procedures to be applied.<sup>232</sup> After the conclusion of the interrogation on 20 December 2022, the Investigating Judge and the Prosecutor agreed on imposing a prohibition on involvement with the Greek Helsinki Monitor, while they disagreed on the remaining measures accompanying this prohibition; to be decided by the competent Judicial Council. Specifically, the Prosecutor had additionally proposed house arrest with permitted exit only for medical visits, while the Investigating Judge had proposed a travel ban, coupled with reporting to a police station twice a month and a 10,000 € bail.<sup>233</sup> The Council of Europe Commissioner for Human Rights and the UN High Commissioner for Human Rights voiced concerns about the case in January 2023.<sup>234</sup>
- 77.2. On 10 January 2023, 24 humanitarian activists, including search and rescue volunteers and humanitarian workers, faced trial for a series of misdemeanour charges, including unlawful use of radio frequencies, espionage, forgery, and assisting the criminal organization of the NGO Emergency Response Center International (ERCI) in their smuggling activities. The Court of Mytilene acquitted all defendants for the crime of unlawful use of radio frequencies, which had been abolished in the meantime. It also annulled the summons for all foreign defendants on the

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<sup>231</sup> OHCHR, 'Trial of human rights defenders in Greece for helping migrants', 13 January 2023, <https://bit.ly/3Henn4L>.

<sup>232</sup> Campaign for Access to Asylum, 'Witch-hung against defenders of human rights in complete reversal of reality', 19 December 2022, <https://bit.ly/3G9ibgP>.

<sup>233</sup> Campaign for Access to Asylum, 'Update on the ongoing persecution of human rights defender Panayote Dimitras', 21 December 2022, <https://bit.ly/3ldWor3>.

<sup>234</sup> Council of Europe Commissioner for Human Rights, 'Greek authorities should reverse the trend undermining the work of human rights defenders and journalists', 12 January 2023; OHCHR, 'Trial of human rights defenders in Greece for helping migrants', 13 January 2023.

ground that it had not been translated in a language they could understand, and the charge of espionage for all defendants due to lack of precision. It eventually referred to trial to of the Greek defendants for the respective crimes of forgery and provision of information to ERCI. It should be noted that the 24 face felony charges for smuggling, facilitation of illegal entry and for forming and participating in a criminal organisation that engages in the commission of felonies, in particular in the facilitation of illegal entry of third-country nationals. The criminal proceedings for the felony charges are still at the stage of pre-trial investigation and, if they come to trial, could lead to up to 25 years imprisonment. Additionally, three of the defendants who were working for the NGO ERCI had been kept in pre-trial detention for more than 100 days. Amnesty International has called the charges farcical.<sup>235</sup> Serious concerns have also been voiced by the UN Special Rapporteur on human rights defenders<sup>236</sup> and by the Council of Europe Commissioner for Human Rights.<sup>237</sup>

- 77.3. Other significant cases of criminalisation of human rights defenders include the launch of preliminary examinations for serious crimes against 35 members of NGOs in September 2020,<sup>238</sup> and four members of NGOs in July 2021.<sup>239</sup> The first case mainly concerns citizens of Germany, France, Norway and Austria, whom the Police accused *inter alia* of forming a criminal organisation facilitating the smuggling of third-country nationals from Türkiye to Lesbos, and espionage. In the second case, the charges are similar, with one of the accused reporting being sexually harassed while in police custody. In both cases, the defendants are human rights defenders engaging in the documentation of human rights abuses at the Greek borders.

## D. Initiatives to foster a rule of law culture

### Measures to foster a rule of law culture

78. **Discrediting of international and EU institutions:** The Greek government consistently discredits EU and international bodies vis-à-vis violations of the fundamental rights of people seeking asylum in the country. The UN Special Rapporteur on the human rights of migrants stated in 2022 that "In Greece, pushbacks at land and sea borders have become de facto general policy."<sup>240</sup> A wide array of authoritative European and international monitoring bodies corroborate these concerns and consistently denounce systemic breaches of fundamental rights at Greece's land and sea borders within the scope of their respective mandates. These include at least: the UN High Commissioner for Refugees (UNHCR);<sup>241</sup> the International Organisation for Migration

<sup>235</sup> Amnesty International, 'Greece: humanitarian workers' lives remain on hold as trial is adjourned', 18 November 2021, <https://bit.ly/3vELgfn>.

<sup>236</sup> UN Special Rapporteur on human rights defenders, 'Greece: Guilty verdict for migrant rights defenders could mean more deaths at sea – UN expert', 18 November 2021, <https://bit.ly/3GmCS97>.

<sup>237</sup> Council of Europe Commissioner for Human Rights, 'Greek authorities should reverse the trend undermining the work of human rights defenders and journalists', 12 January 2023.

<sup>238</sup> Kathimerini, 'Δικογραφία εις βάρος 35 μελών ΜΚΟ', 29 September 2020, <https://bit.ly/3ILpxKz>.

<sup>239</sup> Ethnos, 'ΕΛΑΣ: «Πολυεθνική» ΜΚΟ σε κύκλωμα διακίνησης μεταναστών από την Τουρκία στη Λέσβο', 19 July 2021, <https://bit.ly/3WP4ivb>.

<sup>240</sup> UN Special Rapporteur on the human rights of migrants, *Human rights violations at international borders: trends, prevention and accountability*, A/HRC/50/31, para 32, <https://bit.ly/3OuPQFm>.

<sup>241</sup> UNHCR, 'UNHCR warns of increasing violence and human rights violations at European borders', 21 February 2022, <https://bit.ly/39Md9L4>; 'UNHCR concerned by pushback

(IOM);<sup>242</sup> the UN Committee on Enforced Disappearances (CED);<sup>243</sup> the UN Committee on the Rights of the Child (CRC);<sup>244</sup> The United Nations Human Rights Council;<sup>245</sup> the UN Working Group on Arbitrary Detention (WGAD);<sup>246</sup> the UN Special Rapporteur on the human rights of migrants;<sup>247</sup> the UN Special Rapporteur on human rights defenders;<sup>248</sup> the Council of Europe Commissioner for Human Rights;<sup>249</sup> the European Committee for the Prevention of Torture (CPT);<sup>250</sup> and Frontex and the EU Anti-Fraud Office (OLAF).<sup>251</sup> For its part, the European Commission has agreed that “the issue of alleged pushbacks by the Greek authorities is highly concerning”<sup>252</sup> and stresses the “need to reinforce the transparency of border operations by establishing a reliable and independent border monitoring mechanism.”<sup>253</sup>

79. In a June 2022 letter to the European Parliament, the Minister of Migration and Asylum described such reports as the work of “adversaries... always ready to sow division and spread lies” and “propaganda machines”. The letter explicitly referred to the LIBE Committee as an institution susceptible to “manipulation” by “propaganda machines and smuggling networks” (see [Other: Civil Society](#)).<sup>254</sup>

80. **Persisting obfuscation of independent mechanisms on monitoring of human rights violations:** During the reporting period, the European Commission has continued to engage with the Greek government on the creation of an independent authority to investigate push backs of refugees and migrants, despite a continuation and intensification of such human rights violations in daily practice. Further to assurances given to the European Commission on a “new proposal to mainstream fundamental rights” within the Greek asylum system,<sup>255</sup> the government enacted legislation on the establishment of a Fundamental Rights Officer (FRO) and a Special Commission on

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reports, calls for protection of refugees and asylum-seekers’, 21 August 2020, <https://bit.ly/3xNCV9O>.

<sup>242</sup> IOM, ‘IOM Alarmed over Reports of Pushbacks from Greece at EU Border with Turkey’, 11 June 2020, <https://bit.ly/39GXQDi>.

<sup>243</sup> CED, *Concluding observations on the report submitted by Greece*, CED/C/GRC/CO/1, 12 April 2022, paras 28-31, <https://bit.ly/3OwtTVh>.

<sup>244</sup> CRC, ‘Experts of the Committee on the Rights of the Child Ask Greece about Roma Children and Push Backs of Refugees at the Border’, 4 May 2022, <https://bit.ly/3xDCsqA>.

<sup>245</sup> UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Greece*, A/HRC/49/5, 6 January 2022, paras 130.96, 130.202, 130.204, 130.209, 130.214, 130.215, 130.216, 130.223, 130.226, <https://bit.ly/3tSxghE>.

<sup>246</sup> WGAD, *Report of visit to Greece*, A/HRC/45/16/Add.1, 29 July 2020, paras 87-88, <https://bit.ly/3HINxuZ>.

<sup>247</sup> UN Special Rapporteur on the human rights of migrants, *Human rights violations at international borders: trends, prevention and accountability*, A/HRC/50/31, <https://bit.ly/3OuPQFm>.

<sup>248</sup> UN Special Rapporteur on human rights defenders, ‘Statement on preliminary observations and recommendations following official visit to Greece’, 22 June 2022, <https://bit.ly/3tSwZLB>.

<sup>249</sup> Council of Europe Commissioner for Human Rights, ‘Greek authorities should investigate allegations of pushbacks and ill-treatment of migrants, ensure an enabling environment for NGOs and improve reception conditions’, 12 May 2021, <https://bit.ly/3OclKpt>.

<sup>250</sup> CPT, ‘Council of Europe’s anti-torture Committee calls on Greece to reform its immigration detention system and stop pushbacks’, 19 November 2020, <https://bit.ly/39FChmQ>.

<sup>251</sup> OLAF, Case No OC/2021/0451/A1, Olaf.03(2021)21088, <https://bit.ly/3Es470W>.

<sup>252</sup> European Commission, Ares(2021)454531, 13 July 2021, <https://bit.ly/3Nrc5dv>.

<sup>253</sup> European Commission, Reply to written question E-2697/2021, 22 July 2021; Reply to written question E-1667/2021, 30 June 2021; Reply to written question E-4587/2020, 23 November 2020; Reply to written question E-4566/2020, 17 November 2020; Reply to written question E-4168/2020, 9 October 2020.

<sup>254</sup> Ministry of Migration and Asylum, Letter to the LIBE Committee Chair, 233/2022, 20 June 2022.

<sup>255</sup> Euronews, ‘“Violent and illegal” migrant pushbacks must end now, EU warns Greece’, 8 June 2022, <https://bit.ly/3F6xebJ>.

Fundamental Rights Compliance within the Ministry of Migration and Asylum, under Articles 49 and 50 L 4960/2022 respectively. The reform was introduced as a last-minute amendment to a bill on protection of unaccompanied children, as detailed in [Other: Law-Making](#).

81. Under Article 49 L 4960/2022, the FRO is tasked with "collection and preliminary assessment of complaints on alleged violations of fundamental rights during the reception of third-country nationals and procedures for granting international protection thereto, as well as transmission thereof to the NTA or competent bodies, as the case may be" (see [Other: Independent Authorities](#)).<sup>256</sup> However, Article 49 L 4960/2022 does *not* extend the FRO's mandate to fundamental rights violations related to border management, i.e. push backs. In any event, the FRO would not be in a position to review complaints relating to activities outside the competence of the Ministry of Migration and Asylum. In an instructive reply given in November 2022, the Ministry of Migration and Asylum declared itself non-competent to respond to a parliamentary question relating to reports of abuse against a group refugees and prevention of access to asylum on the island of Lesbos.<sup>257</sup> Therefore, the European Commission's view that the FRO "will look both into complaints related to border operations and to asylum procedures" is incorrect and does not reflect Article 49 L 4960/2022.<sup>258</sup>
82. The FRO may be a public servant or a political appointee.<sup>259</sup> The FRO is selected by a five-member Assessment Committee with government majority, composed of three government officials, the President of the National Commission for Human Rights and the Ombudsman.<sup>260</sup> Both independent authorities have voiced serious concerns about membership of a committee underpinned by "majority participation of representatives of the Administration", as incompatible with their mandates.<sup>261</sup> The first FRO appointed in December 2022 is a former Armed Forces official.<sup>262</sup>
83. As for the Special Commission on Fundamental Rights Compliance, also composed by a majority of government officials, Article 50(1) L 4960/2022 refers to competence on "monitoring of procedures and of implementation of national, EU and international legislation in the areas of border protection and of the granting of international protection". The Ombudsman has pointed out that the mandate of the Committee is "undefined" in the law, on the one hand, and that the possibility for the government to spell out the Committee's responsibilities and powers at its discretion through regulatory acts (by way of Joint Ministerial Decision)<sup>263</sup> is even more problematic.<sup>264</sup> The Ministry of Migration and Asylum publicly announced the first meeting of the

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<sup>256</sup> Article 49(1) L 4960/2022.

<sup>257</sup> Ministry of Migration and Asylum, Reply to parliamentary question, 690627/2022, 17 November 2022, <https://bit.ly/3EpGfv1>.

<sup>258</sup> European Commission, Reply to written question P-2815/2022, 21 October 2022; Reply to written question E-2668/2022, 13 October 2022; Reply to written question E-2152/2022, 19 September 2022.

<sup>259</sup> Article 49(4) L 4960/2022.

<sup>260</sup> Article 49(5) L 4960/2022.

<sup>261</sup> Ombudsman, 'Articles 49 & 50 L 4960/2022', 42673/2022, 29 July 2022, <https://bit.ly/3ODTrkF>; National Commission for Human Rights, 'Επιστολή της ΕΕΔΑ προς τον Γ.Γ. του Υπουργείου Μετανάστευσης και Ασύλου', 18 October 2022, <https://bit.ly/3OJsw7e>.

<sup>262</sup> Ministry of Migration and Asylum, 'Ορίστηκε ο Υπεύθυνος Προστασίας Θεμελιωδών Δικαιωμάτων στο Υπουργείο Μετανάστευσης & Ασύλου', 2 December 2022, <https://bit.ly/3QhZEUg>.

<sup>263</sup> Article 50(3) L 4960/2022.

<sup>264</sup> Ombudsman, 'Articles 49 & 50 L 4960/2022', 42673/2022, 29 July 2022, <https://bit.ly/3ODTrkF>.

Committee in August 2022,<sup>265</sup> even though no Joint Ministerial Decision has been adopted to define its exact responsibilities. No further information has been made available by the Ministry on the work of the Committee to date.

84. Both the Ombudsman and the National Commission for Human Rights have expressly called upon the government to reconsider the above reform, expressly highlighting that neither of the bodies established by L 4960/2022 amounts to an independent monitoring mechanism on fundamental rights compliance.<sup>266</sup>

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<sup>265</sup> Ministry of Migration and Asylum, '1η συνεδρίαση της Ειδικής Επιτροπής για τη Συμμόρφωση με τα Θεμελιώδη Δικαιώματα', 23 August 2022, <https://bit.ly/3UdlgBA>.

<sup>266</sup> Ombudsman, 'Articles 49 & 50 L 4960/2022', 42673/2022, 29 July 2022; National Commission for Human Rights, 'Επιστολή της ΕΕΔΑ προς τον Γ.Γ. του Υπουργείου Μετανάστευσης και Ασύλου', 18 October 2022, <https://bit.ly/3OJsw7e>.



## Contributing organisations

### **Vouliwatch**

Areas of work	Anti-corruption; Open government; Good law-making; Parliamentary openness; Press freedom
Website	<a href="https://vouliwatch.gr/">https://vouliwatch.gr/</a>
Contact details	<a href="mailto:press@vouliwatch.gr">press@vouliwatch.gr</a>

### **Greek Council for Refugees (GCR)**

Areas of work	Justice; Asylum; Migration
Website	<a href="https://www.gcr.gr/en/">https://www.gcr.gr/en/</a>
Contact details	<a href="mailto:gcr1@gcr.gr">gcr1@gcr.gr</a>

### **Refugee Support Aegean (RSA)**

Areas of work	Justice; Asylum; Migration
Website	<a href="https://rsaegean.org/en/">https://rsaegean.org/en/</a>
Contact details	<a href="mailto:m.mouzourakis@rsaegean.org">m.mouzourakis@rsaegean.org</a>
Transparency Register No	583270644066-47

### **HIAS Greece**

Areas of work	Justice; Asylum; Migration
Website	<a href="https://hias.org/where/greece/">https://hias.org/where/greece/</a>
Contact details	<a href="mailto:elli.kriona@hias.org">elli.kriona@hias.org</a>

### **Generation 2.0 – Second Generation / Institute for Rights, Equality and Diversity**

Areas of work	Migration; Citizenship; Non-discrimination
Website	<a href="https://g2red.org/">https://g2red.org/</a>
Contact details	<a href="mailto:info@g2red.org">info@g2red.org</a>
Transparency Register No	006020340285-19

### **Reporters United**

Areas of work	Press freedom; Surveillance; Media
Website	<a href="https://www.reportersunited.gr/en/">https://www.reportersunited.gr/en/</a>
Contact details	<a href="mailto:reporters@reportersunited.gr">reporters@reportersunited.gr</a>