



Thursday, 24 September 2020

Executive Summary

Special Report of the Ombudsman as the National Mechanism For the Investigation of Arbitrary Incidents for 2019

In its 2019 special report, the Ombudsman analyses the deficiencies of disciplinary investigations into arbitrary incidents examined in 2019 with regard to the public security forces. Highlighting that allegations of bodily integrity or health abuse during arrest, detention and police operations of all kinds constitute more than half of all complaints, the Ombudsman stressed that the impartial and thorough disciplinary investigation of complaints is a basic and non-negotiable requirement for the rule of law.

This report of the Ombudsman, as the National Mechanism for the Investigation of Arbitrary Incidents, is the second since the beginning of the operation of the Mechanism (in June 2017) regarding the uniformed personnel of the Hellenic Police, the Hellenic Coast Guard, the Fire Department and the staff of State Penitentiaries.

Its special remit involves independent investigation of complaints relating to specific arbitrary incidents, referral of cases to the public security forces for internal investigation, ability to monitor the process and recommend further investigation, and moreover, to the decisive remit to repeat the disciplinary procedure, following relevant decisions of the European Court of Human Rights (ECtHR),

The National Mechanism for the Investigation of Arbitrary Incidents received 208 complaints in all in 2019, most of them by the Hellenic Police (ELAS), namely 30 by citizens, 176 by ELAS, 1 by the Coast Guard, 1 of the ECtHR by the Legal Council of the State, none from the General Secretariat of Crime Policy.

Forty investigations were referred back by the Ombudsman to the Administration with a view to complete the investigation while thirty investigations were deemed complete, except for general observations on how to conduct similar investigations, while the Administration responded by supplementing the findings referred back, except for three cases referred back by the Ombudsman due to insufficient reasoning. In the statistical evaluation of the year, the Ombudsman notes that the Preliminary Administrative Examination is the overwhelming rule in ELAS investigations, while sanctions are proposed by those conducting the administrative investigations in ten cases only.

The shortcomings in administrative enquiries examined in 2019 are presented in an extensive chapter of the report, with comments by subject category. This section presents the findings and recommendations of the Ombudsman on the problems of administrative investigations it examined in matters of personal freedom (cases of threats, control of individuals, arrests, policing of public protests, including injuries by tear gas, and forced returns), allegations of torture and other serious abuse of human dignity, as well as threat to life, such as the death of an injured young man arrested by police officers following a complaint of attempted robbery in Athens.

More than half of all complaints received by the National Mechanism in 2019 involve threat to physical integrity or health during arrest, detention and all sorts of police operations. Separate analyses are included for administrative investigations into the use of firearms, as well as racist or discriminatory behaviour.

In some cases, the National Mechanism carried out an independent parallel investigation, presenting the specificities and stages of such investigations in a separate section of the report. In one case in 2019 a sentence by the ECtHR (Sarwari, judgment of 11.4.2019) was referred to the Ombudsman with the question of repetition of disciplinary proceedings on grounds of disproportionately lenient and ineffective disciplinary penalties against police officers for the abuse of Afghan citizens. The Ombudsman, noting that the involved police officers had resigned from service and it was not possible to repeat the forensic examination, proposed general measures to the Administration and reiterated the proposal of the previous report that there should be financial consequences for those police officers who have left the service in the meantime.

The usual issues presented by the internal investigations of the Administration are presented in a separate chapter as horizontal, systemic problems that need to be resolved by the Administration. Examples include cases where an informal investigation is carried out instead of the statutory preliminary examination, failure to investigate the complaint against police officers or failure to identify the parties involved, entrusting an investigation to the Directorate involved in the complaint, failure to examine third-party witnesses other than police, problematic assessment of the evidence material (non-compliance with equal distance, failure to ask questions and use photographs, identical testimonies etc.) abusive suspension of the disciplinary procedure during the criminal trial, investigation pending on the element of complaint, which is need for the criminal but nit the disciplinary procedure, prosecution for insubordination or resistance against the authorities when citizens react to excessive control against themselves or other citizens, etc.

In this report The Ombudsman noted two positive steps:

- > Police disciplinary law was amended in December 2019 incorporating several of the proposals made by the Ombudsman in its previous report, such as ensuring the impartiality of the persons carrying out a preliminary administrative investigation through the required service distance between investigators and investigated, ensuring the independence of disciplinary action, against the criminal investigation of the case and the exceptional nature of the measure of suspension of disciplinary proceedings, as well as the limitation of the duration of administrative proceedings, to deal with chronic delays.
- > A second decisive step is the amendment of the National Mechanism legislation. The provisions introduced by Art.188 Law 4662/2020 are a response to the relevant proposals the Ombudsman had submitted to the government as early as October 2018, signal the necessary strengthening of the National Mechanism by institutional means (summoning of witnesses, taking sworn statements, ordering expert opinions providing for a referral to the competent Minister of the Disciplinary Body in cases of unjustified deviation from the ruling of the National Mechanism), in order to be able to carry out its critical mission, at the same time exploring the possibility of independent investigation.

After the promulgation of Law 4622/2020, EL.AS is expected to respond to the information requested by the Ombudsman on complaints regarding police operations in November and December 2019.

These institutional developments come at a time of charged political debate mainly over the legitimacy of police operations.

The critical functioning of the Ombudsman's Mechanism and its further strengthening in order to effectively investigate any illegal and blameworthy conduct that affects the trustworthiness of the public security forces from the inside, is an important issue for the rule of law in our country.

As characteristically stated by The Ombudsman Mr. Andreas Pottakis, *"Any cover-up, or even suspicion thereof, is absolutely unacceptable and brings a crucial blow to social cohesion and the rule of law"*.

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