



National Mechanism for the Investigation of Arbitrary Incidents

SPECIAL REPORT

2020

NATIONAL MECHANISM FOR THE INVESTIGATION OF ARBITRARY INCIDENTS

SPECIAL REPORT 2020

This Special Report is a product of material processing that arose from the work of the National Mechanism for the Investigation of Arbitrary Incidents team of the Greek Ombudsman, under the supervision of the Ombudsman Andreas I. Pottakis.

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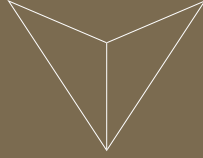
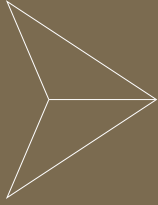
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Introduction

Introduction

— **In a liberal state and society, the security forces' mission is intertwined with the protection of citizens, the protection and respect of their rights, the observance of laws.** It is for this reason that security forces are given the power to take coercive measures and exert force. Yet, the exercise of this power is neither unrestricted nor uncontrolled. It must be strictly limited to a necessary and proportional extent and be subject to thorough, substantive and continuous control, with criminal and disciplinary sanctions commensurate with the gravity of the arbitrary or abusive exercise. The assignment to the Ombudsman of the special competence for investigating cases of arbitrariness by security forces and penitentiary employees stresses the importance of enhancing the mechanisms of accountability and transparency when investigating every incident.

From the very first year of operation of the National Mechanism for the Investigation of Arbitrary Incidents, the Ombudsman highlighted problems and shortcomings in the manner that disciplinary investigations were being conducted and put forward a number of proposals, both for improving the legal framework of disciplinary monitoring and for upgrading its own substantive and efficient operation. Almost all of these proposals received government approval: in a presidential decree issued on New Year's Eve of 2020, the ELAS disciplinary law was amended, with the incorporation of the Ombudsman's proposals, while Law 4662/2020 gave the Mechanism effective powers of inquiry, similar to those of the internal disciplinary mechanisms of security forces, as well as tools to further strengthen the decisive effect of its observations, investigations and findings on disciplinary controls. Despite the inevitable restrictions that were imposed on the operation of the Mechanism due to the spread of the COVID-19 pandemic in 2020, for the purpose of ensuring the health of complainants, those under investigation, witnesses and officials of the Authority, a number of new tools which were available to the Mechanism were used immediately. Indicatively, the Ombudsman made use of a new provision and referred four (4) cases to the Minister of Citizen Protection in 2020 – so that he might act in his capacity as disciplinary head of the security forces – deeming the internal disciplinary bodies' deviation from its findings as insufficiently justified. The outcome of these cases, the political leadership's initiatives and decisions are awaited with particular interest, as they will demonstrate the extent to which Administration acknowledges the de facto binding nature of the Independent Authority's findings, while showing a sincere willingness to substantially improve internal investigation of incidents of arbitrariness.

At the same time, the enhancement of the Mechanism with the necessary expert staff is imperative due to the constantly rising volume of incidents. In December 2020, Article 28 of Law 4760/2020 strengthened the Mechanism's human resources with the secondment of existing officers, while five (5) new positions were created for expert personnel, the actual recruitment of which depends on the overall planning for the public sector and the relevant quotas that will be allocated to the Independent Authority. This brings to the fore the necessity of harmonising the existing legislation with Council of Europe standards and recommendations for the establishment of a staff selection process by the Authority itself; the procedure for recruiting the first staff members of the Mechanism, which followed the legislation still in effect on the selection process and the compliance with the overall quotas allocation and recruitment planning for the entire public sector and took four (4) years to be completed, clearly falls short of meeting the pressing needs of the Authority for additional staff and fails to appropriately and adequately respect its independence.

The report for 2020 – the third such report – demonstrates the degree of compliance of the internal disciplinary bodies with the recommendations and findings of the Ombudsman's Mechanism. Full consolidation of procedural and substantive guarantees of effective, transparent, non-discriminatory disciplinary investigation that is consistent with the dicta of the rule of law and the jurisprudential principles is not expected to be achieved at once. It requires persistent efforts, without derogations or concessions. At the same time, in this third report, the Mechanism is able to make a first assessment and evaluation of the contribution of the institutional changes that took place last year in serving the goal of complete, efficient and fast completion of the disciplinary procedures. With respect to 2020, complaints of violence that arose during the COVID-19 compliance monitoring were added to the incidents that are systematically recorded in the reports of the Mechanism published to date. These incidents are examined, *inter alia*, both with respect to compliance with the principle of necessity and proportionality and the identification of possible racist behaviour.

What has the Greek Ombudsman, under the special mandate of investigating arbitrary incidents involving uniformed members of security forces achieved to date?

- The referral of about half of the (hundreds of) completed investigations which it supervised, for supplementation, correction, re-evaluation of evidence, reassessment of reasoning and operative part, observance of substantive, jurisdictional and procedural guarantees.
- An institutional framework for disciplinary monitoring of ELAS, which is harmonised with the dictates of the Council of Europe and the ECtHR.
- For the first time in Greece, transparency, through its reports, at the investigational level and for the deviations from substantive, jurisdictional and procedural rules.

The further enhancement of the effective operation of the Authority's Mechanism, with the simultaneous shielding of its independence and impartial judgement, presupposes the establishment of a number of organisational and functional regulations for the Ombudsman, in harmonisation with the "Venice principles": the set of 25 standards for the Ombudsman institution elaborated by the Venice Commission and unanimous-

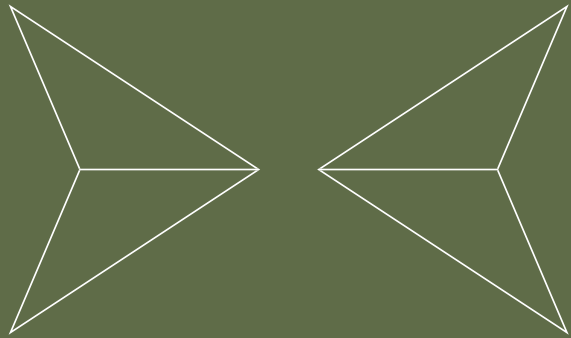
ly approved by the Committee of Ministers of the Council of Europe. The proposed changes to the institutional framework of the Ombudsman have been submitted to Greek governments since 2018.

The ever-increasing flow of incidents to the Mechanism, in total (an increase of about 25% in 2020 compared to the previous year), as well as of those submitted by ELAS (an increase of about 20% in 2020, compared to the previous year) and those that were reported by citizens (increase of about 75% in 2020, compared to the previous year) demonstrates that the Ombudsman's contribution is acknowledged by both ELAS and society.

These data, and especially the remarkable increase in complaints filed by citizens, are indicative of the wider phenomenon, which confirms the so-called 'grey number' of arbitrary incidents, in which the alleged victim's fear of being involved in official proceedings clearly inhibits the right to petition. However, the more the investigations are upgraded, the more transparent, substantive and impartial the procedures become, and the more the substantive and procedural guarantees are observed – with the assistance of the National Mechanism for the Investigation of Arbitrary Incidents - the greater citizens' confidence will become in the reliability of disciplinary investigations.

Incidents of arbitrariness have taken place and will continue to take place. Their drastic restriction is a demand of society and an obligation of the state. Qualitative upgrading and monitoring of security forces and detention facility employees is vital to limiting the phenomenon and consequently regaining or reaffirming public confidence in the mission of the security forces and penitentiary facility employees. Without lowering the standards for the transparent, impartial and independent investigation of each reported incident.

Andreas I. Pottakis
The Greek Ombudsman



1. The Independent Authority's mandate as National Mechanism for the Investigation of Arbitrary Incidents

The Independent Authority's mandate as National Mechanism for the Investigation of Arbitrary Incidents

— **The entrusting of monitoring, full and effective investigation of arbitrary incidents** in the actions of the security forces and penitentiary officers to the Ombudsman in June 2017 followed on the Independent Authority's long-term engagement with issues concerning the legality of the actions of these services and its continuous, consistent presence over the past decade in the area of detention,¹ in the context of the special monitoring mandates entrusted to it. Law 4443/2016² designated the Ombudsman as the National Mechanism for Investigation of Arbitrary Incidents, with a broad mandate to collect data; to record, evaluate and forward for disciplinary control cases of illegal acts allegedly perpetrated by the uniformed personnel of the Hellenic Police (ELAS), the Hellenic Coast Guard (LS –ELAKT), the Fire Brigade and employees of penitentiary facilities during the performance of their duties or in abuse of their powers.

Today, the Mechanism, which is institutionally enhanced by Article 188 of Law 4622/2020,³ has a mandate to monitor, refer for disciplinary investigation and oversee the disciplinary process for a class of serious unlawful conduct, including:

- i. Torture and other violations of human dignity within the meaning of 137^A of the Penal Code,

1 External monitoring of forced return procedures is provided for by Directive 2008/115/EC and is carried out by the Ombudsman. This competence is regulated by Law 3097/2011, article 23 paragraph 6 and Joint Ministerial Decision 4000/4/57– xi (B 2870/2014). Moreover, under Law 4228/2014, Greece ratified the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The Ombudsman was designated as the National Preventive Mechanism (NPM) for the prevention of torture and other forms of cruel, inhuman or degrading treatment or punishment.

2 Which amended Article 1 of Law 3938/2011.

3 See chapter 7.1 below.

- ii. Unlawful intentional violations of the right to life, physical integrity, health, personal freedom, and sexual freedom,
- iii. Illegal use of a firearm and
- iv. Unlawful conduct for which there are indications that it was racially motivated or presented an implicit element of any other kind of discrimination.

In its first two reports, through the investigations it monitored, the National Mechanism identified the systemic problems of holding uniformed security-force personnel and penitentiary employees responsible and submitted proposals for addressing several chronic dysfunctions. In this third report, with a portion of its recommendations already having been implemented, the Mechanism is in a position to assess the extent to which these changes have served the objective of full, effective, and speedy completion of disciplinary procedures. Moreover, it is able to draw attention to certain unlawful conduct repeated across similar environments and seek a more effective way to monitor this conduct.

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This report also covers the Mechanism's activities in the context of the second part of its mandate,⁴ which is monitoring for unlawful acts within its competence in the country's compliance with rulings of the European Court of Human Rights (ECtHR) on violations of the provisions of the ECHR that find deficiencies in disciplinary procedure or new data not taken into account in the disciplinary process or hearing of the case. The Ombudsman's work has often encountered the case-law of the ECtHR, not just in police violence. In the context of this competence, the Mechanism examines the Court's rulings and may decide to re-investigate a case to initiate or supplement disciplinary proceedings resulting in the appropriate disciplinary sanctions, regardless of the outcome of the initial hearing of the case.

The Mechanism's activities are overseen and coordinated by the Ombudsman himself and are supported by a team of experts with specialised legal training. In 2021, eleven (11) legal experts and the head of the Human Rights Department participated in the Mechanism's Team. The Mechanism's mandate, which contains a strong monitoring component, differs from the generally mediation-oriented mandate of the Ombudsman. Therefore, cases are investigated through a special procedure set out in the Operating

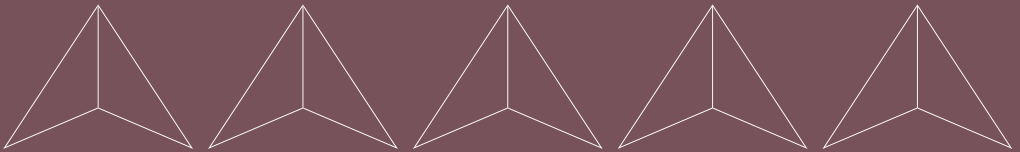
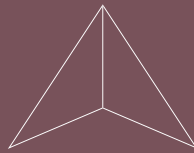
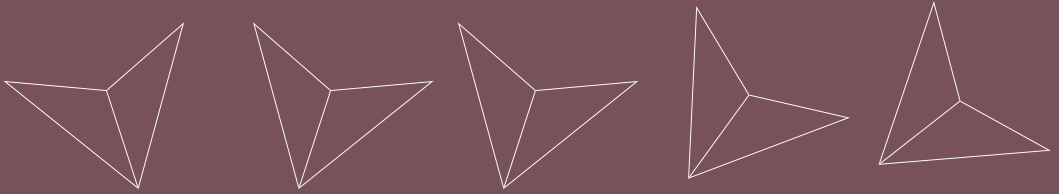
4 See chapter 6 below.

Regulations. In 2020, the initial Rules of Operation of the EMIDIPA⁵ were replaced further to an Ombudsman's Act, with the newer F. 10/23 145/2020, B 2359, to facilitate the implementation of the institution's enhanced competencies that were introduced with Article 188 of Law 4622/2020.

Recognising the need for international dialogue on this topic, the Mechanism deemed it necessary to collaborate with similar authorities, at least at the European level. Limiting the scope of state violence is an issue of global concern. Participation in the international dialogue helps broaden the search for solutions and identify good practices tested successfully in other legal orders. From the moment it went into operation, the National Mechanism has been a member of IPCAN.⁶ This year, given the conditions in Europe resulting from the pandemic, the Mechanism participated in two IPCAN virtual conferences on the Police's role in a democratic society and its relationship with the general population.

5 F. 10/24727/2017, B 2065.

6 The Independent Police Complaints Authorities' Network (IPCAN) is a network of independent institutions, mainly from European Union member states, in charge of receiving and processing complaints against public security forces. Detailed information can be found at the website: <https://ipcan.org/>.



2. Statistical assessment

Statistical assessment

— **The Greek Ombudsman, as the National Mechanism for the Investigation of Arbitrary Incidents**, received a total of two hundred sixty-three (263) cases in 2020 for acts or omissions of uniformed personnel of ELAS, LS –ELAKT, the Fire Brigade, and prison employees that the law defines as arbitrary acts of their capacity.⁷

The remarkable increase in cases, about 26%, from two hundred eight (208) cases in the previous year is explained by the increasing recognition of the National Mechanism by the public. This finding is supported by the 76.6% increase in the number of reports from citizens.⁸ In most cases, the National Mechanism was informed of the incidents by ELAS, which forwarded the relevant orders for internal investigations⁹, which it decided to monitor, subject to its own investigation. It should be noted that in these cases, the transmission of internal (disciplinary) investigation orders and the procedural monitoring by the National Mechanism entails, according to the law, that:

- i. The findings and files of the internal investigations are forwarded to the Ombudsman, which checks them for completeness and can refer the investigation for supplementation and
- ii. The relevant disciplinary bodies shall suspend their decision until the Ombudsman issues a case-file report.

In 2020, two hundred and nine (209) cases were forwarded to the National Mechanism by ELAS, compared to the one hundred and seventy-six (176) cases in 2019

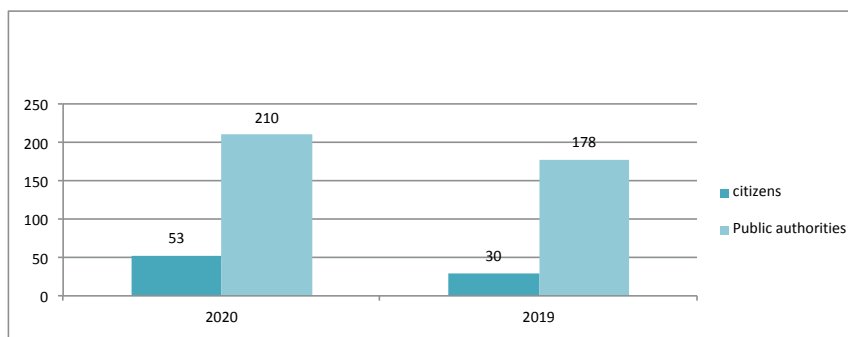
7 Article 1(1) Law 3938/2011, as replaced by Article 56 of Law 4443/2016 and then by Article 188 Law 4662/2020 (A 27/07.02.2020) such as: torture and other violations of human dignity within the meaning of Article 137^A of the Penal Code, unlawful intentional violations of the right to life, physical integrity, health, personal freedom and sexual freedom, illegal use of a firearm and unlawful conduct for which there are indications that it was carried out with a racist motive, or which presents an implicit element of any other kind of discrimination, as further specified by law.

8 Fifty-three (53) reports in 2020, compared to thirty (30) in the previous year.

9 As to the type of investigation – Preliminary Administrative Inquiry (PDE) or an Administrative Inquiry Under Oath (EDE) – it is noted that the PDE is the overwhelming rule of ELAS investigations, except for investigations carried out into the use of a firearm, for which the law requires in every case an EDE to be carried out, a few cases of heavier misconduct (*life infringements, torture*) and cases where criminal proceedings are brought against a police officer, in which case the PDE is converted to an EDE.

(an increase of 18.7%) as well as one (1) case¹⁰ from the Legal Council of the State (LCS) for the Mechanism to assess whether the Administration can carry out a resumption of disciplinary proceedings following the relevant ECtHR decision (see **Chart 1, case origin**).

CHART 1, CASE ORIGIN



We observe that in 2020 no cases were referred to the Ombudsman from the LS- ELAKT Headquarters, which in the past two (2) years had notified the National Mechanism regarding six (6) incidents. From the inception of the National Mechanism on 09.06.2017 till this date, the General Secretariat of Anti-Crime Policy has abstained completely from the transmission of incidents related to acts or omissions of prison employees,¹¹ despite the relevant urging of the Independent Authority, which seeks to ensure the necessary transparency in the prison establishments. In contrast, ELAS continues to show its willingness to pursue transparency and cooperate with the Ombudsman by systematically forwarding the relevant investigations to the Ombudsman at an increasing rate, as mentioned earlier.

Of the two hundred and sixty-three (263) cases brought to the National Mechanism in 2020, ten (10) were outside its competence, either because they were outside the subject matter of the competence at hand, or because no complaint had been filed by the victim or a proxy, as required by law.

The majority of the **two hundred and fifty-three (253) cases within competence** in 2020 concerned complaints about alleged arbitrary incidents conducted by Police officers (248 cases), three (3) reports by prisoners concerned prison facilities, and two (2) reports concerned LS - ELAKT. This is also due to the large number of cases for which ELAS itself initiates internal investigations and forwards them to the Ombudsman, as mentioned above.

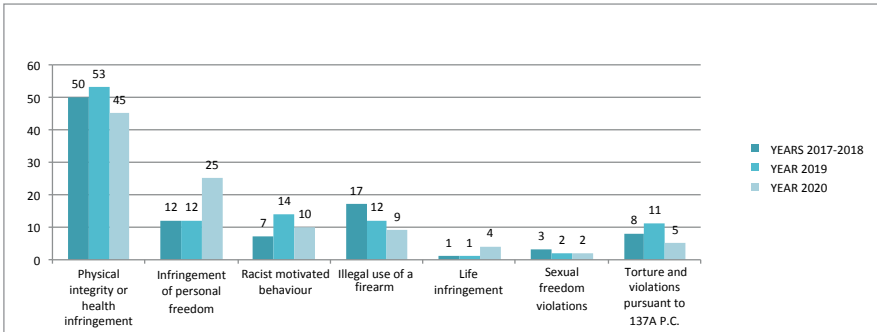
The main subject matter of the alleged arbitrary incidents in the cases within competence brought to the Ombudsman in 2020 included:

10 Another ECtHR case, namely the ruling for *Fountas v Greece* on 03.10.2019, is pending due to the failure, to date, of the relevant Personnel Department to forward the relevant file.

11 See 2019 EMIDIPA report, p. 23, for the Ombudsman's relevant actions.

Physical integrity or health	115
Personal freedom	64
Racist motive ¹²	24
Illegal use of a firearm	23
Torture and violations pursuant to 137 ^A PC	13
Life infringements	9
Sexual freedom	5

CHART 2, ALLOCATION OF CASES BY THEMATIC CATEGORY



We observed a substantial increase in personal freedom cases (which represent 25% in the total number of cases) compared to the previous year. In general, we noted that the thematic categories of physical integrity or health, the protection of life and the prohibition of torture and other serious violations of human dignity (137^A PC) account for the majority of complaints about arbitrary incidents in 2020 (54%), but also in previous years (see. *Chart 2, Allocation of cases by thematic category*).

In 2020, the Ombudsman issued **ninety-seven (97) reports of findings**. Of these findings, eleven (11) concerned disciplinary investigations that started and finished within the year and the rest concerned older cases. In seven (7) of these cases, a look into the administration's findings and the investigation file revealed that the investigated incidents did not fall within the competence of the National Mechanism for the Investigation of Arbitrary Incidents (incidents outside the exercise of duties or without abuse of power by the relevant officers).

Of the ninety (90) cases that were examined on merits, thirty-seven (37) investigations were forwarded by the Ombudsman to the Administration to be supplemented, and it was concluded that fifty-three (53) investigations did not require supplementary action, except for general observations on conducting investigations in similar cases. The noteworthy 41% of the administrative investigations examined on merits for which the Independent Authority requested their supplementation should concern the Administration with respect to improving the quality of the internal disciplinary

12 Or which involves discrimination.

procedures. **The thematic subject matter of the thirty-seven (37) investigations that were forwarded** for supplementation by the National Mechanism included:

Physical integrity or health	22
Personal freedom	5
Illegal use of a firearm	5
Racist motive ¹³	4
Sexual freedom	1

It is interesting to note that **the majority (59%) of the investigations deemed by the national Mechanism to require supplementation concern complaints about the infringement of physical integrity or health.** This may be due to the existence of evidence in medical certificates and forensic reports, combined with the lack of understanding on the part of the officer conducting an administrative investigation, the need to evaluate the medical findings concerning the complaints,¹⁴ as well as the non-consolidation of the principle of reversal of the burden of proof, which is placed on the authorities in case of persons under arrest, in detention or generally under the Police control.¹⁵

The fact that the majority (59%) of internal administrative investigations, given the change in the ELAS disciplinary law in December 2019, further to the Ombudsman's proposal,¹⁶ began to meet the criteria of an impartial and in-depth inquiry, highlights the importance of the institutional dialogue between the Administration and the Ombudsman as an external and independent Mechanism that can contribute to the substantial improvement of administrative investigations.

In addition to the above findings, in 2020, the Ombudsman issued one (1) decision to repeat the disciplinary procedure, based on the ECtHR ruling against Greece in *Konstantinopoulos v Greece* (22.11.2018) LCS forwarded,¹⁷ and nine (9) reports examining the supplementation of investigations that had already been sent to the Administration.

The Administration's deviation from the conclusive part of the Ombudsman's findings is only allowed subject to specific and thoroughly justified reasoning. **Further to a legislative amendment in 2020,¹⁸ the Ombudsman was able to refer to the competent Minister cases which were found to have an insufficiently justified deviation from the findings that the Ombudsman forwarded to the Administration for the supple-**

13 Or which involves discrimination.

14 ECtHR Decisions 26.04.2018, Andersen v Greece.

15 *"Where an individual is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation as to the causing of the injury, failing which a clear issue arises under Article 3 of the Convention"*. See ECtHR decisions *Aksoy v Turkey*, 18.12.1996, *Bekos and Koutropoulos v Greece*, 13.12.2005, and *Zelliof v Greece*, 24.05.2007).

16 With PD 111/2019 (A 216). See the analysis in the 2019 EMIDIPA special report p. 130–138.

17 See chapter 6 of this report for the execution of ECtHR decisions.

18 Article 1 paragraph 4 Law 3938/2011, as replaced by paragraph 1 of article 188 Law 4662/2020.

mentation of the investigation. The Ombudsman forwarded four (4) cases to the Minister of Citizen Protection in 2020 so that he might act as disciplinary head of the agencies. The outcome of these cases will indicate the Administration's disposition to upgrade the internal investigations into incidences of arbitrariness substantially.

In terms of proposed **sanctions**, in the PDE and EDE brought to the Authority in 2020, we noted the proposal of reprimand in one (1) case, the proposal of a fine in one (1) other. In contrast, in another case, we were informed about the final decision of a €180 fine imposed (**F. 266522**). Referral to the disciplinary council was proposed in three (3) cases with leave with dismissal from duties of the involved police officers. In one (1), the question of discharge. When referring to sanctions proposed in the administrative investigations being examined, it must first be clarified that the punitive function is in principle linked to criminal punishment; however, the disciplinary sanctions, which should be proportionate to the misconduct, aim to restore the legality in the operation of the administration. The ECtHR maintains in its case law that inadequate disciplining of those held liable for a disciplinary offence fails to deter the recurrence of similar phenomena in the future.¹⁹ A recent legislative amendment introduced the obligation of the Administration to inform the National Mechanism of the disciplinary decision²⁰ – a regulation that will help to provide a more complete picture in the future.

The above statistics, particularly **the number of complaints, indicate the broader phenomenon** of arbitrary incidents' so-called 'grey number'. The alleged victim's fear of being involved in official proceedings constitutes a crucial factor inhibiting the right to petition. As investigations continue to be upgraded in a transparent, substantive, and impartial manner, with the contribution of the National Mechanism for the Investigation of Arbitrary Incidents, citizens' confidence in the credibility of disciplinary investigations will be further strengthened. According to the ECtHR, effective investigation is not deemed by the specific result but by its ability to produce results, i.e., ascertaining the circumstances, identifying the perpetrators, and their responsibility.²¹ There is a long way to go, but significant steps have been taken, as described in detail in the following chapters.

19 ECtHR Decision *Sidiropoulos and Papakostas v Greece* on 25.04.2018, et al.

20 Article 1 paragraph 4 in fine Law 3938/2011, as replaced by paragraph 1 of Article 188 Law 4662/2020.

21 ECtHR Decisions *Konstantinopoulos v. Greece*, 22.11.2018, *Makaratzis v Greece*, 20.12.2004, § 74: "The investigation must be capable, firstly, of ascertaining the circumstances in which the incident took place and, secondly, of leading to the identification and punishment of those responsible. This is not an obligation of result, but of means."



3. Typical issues in the 2020 cases

3. Typical issues in the 2020 cases

3.1. Incidents against persons from vulnerable groups

— **All the cases that were brought to the National Mechanism in 2020, whether these were citizens' reports of incidents of arbitrariness or cases for which the Administration ordered an internal investigation, preliminary (PDE) or sworn (EDE), show a feature that has also been observed in previous years: The legal “arbitrariness” of police personnel, namely abuse, infringement of personal freedom, physical integrity, or health, often appears to be directed towards young individuals.**²²

In a case where ELAS forwarded an investigation file for the alleged beating of two young individuals in Crete, during their transfer in the patrol vehicle and at the local police department, the Ombudsman commented, among other things, that according to Article 96 PD 141/1991, an apprehension is carried out further to an individualised suspicion that a criminal offence has been committed, since citizens cannot be presumed suspicious and are not obligated to associate their presence in a public space with a certain legal purpose. The rejection of the complaints regarding the beating in the investigated case is insufficiently justified because the individual conducting the PDE does not assess all the medical findings of the forensic report, including bodily injuries by a blunt instrument, which are consistent with those reported. Even if individual blows could be verified and not a “brutal attack”, their legitimacy is still under investigation, i.e., it must be documented, and not summarily denied that the force used exceed what is necessary. The Ombudsman forwarded the inquiry to ELAS for supplementation (F. 269220).

For most 2020 cases, the investigation is in progress; therefore, the necessary quality analysis of the conclusions remains to be completed. Nevertheless, an initial quantitative assessment regarding the complaints filed and the administrative inquiry ordered constitutes a reliable and worrying indication. The age-specific social experience and psychological composition of young individuals and the consequent psychology of

22 Approximately between 18 and 25 years of age, and adolescents in some cases.

fear and/or hostility are fuelled by unethical and/or violent behaviour on the security forces' uniformed personnel. The National Mechanism brought attention to the need for appropriate operational circular directives, rules of engagement, and related training of police officers.

Another distinct group among the alleged recipients of arbitrariness is aliens. Complaints of beatings are the most common cases; however, complaints of offensive behaviour with a racist motive are also present in identity checks. In both situations, the common denominator is that the alien's fundamental rights are undermined. Typically, allegations of racist treatment by police officers are also filed by Greeks due to their ethnic origin (F. 277107). It is also worth noting that those reporting prejudice against aliens also include tourists (F. 259976), students (F. 286188) not to mention asylum seekers living at reception centres (F. 275300) or aliens who are administratively detained and are subject to a special relationship of domination (F. 277945, F. 277727) and are vulnerable because they are detained.²³ In these cases, the Ombudsman points out that every measure must be taken to protect both the complainant and witnesses, due to their being asylum seekers, from retaliatory behaviour during the investigation of the incident for which the right of petition has been exercised (F. 275300). Moreover, the Ombudsman insists on the need for necessary measures to be taken for the protection of complainants and witnesses who are administratively detained, to consider their transfer to another place of detention (F. 278315), or protective custody, in the case of unaccompanied minors (F.278283, F. 273984). Those who are both young and alien double their risk of being targeted. The combination of both traits, as discrimination with its dynamics, appears in many of the above cases.²⁴

Interestingly, the examination of alien detainees is de-emphasised in the disciplinary procedure (in some cases, it is completely omitted, both for the alleged victims and for the essential witnesses), without justification by the investigator (F. 266506, F. 257712). It is quite common for the alleged victims or witnesses not to be sought promptly, which results in their not being found at the detention centre (F. 246381) or their place of residence at the time of the incident when they are called to the administrative inquiry months after the incident.²⁵ The Ombudsman points out that the failure to track the alleged victim and substantial witnesses promptly makes the investigation ineffective from the beginning. Hence, it requests their priority examination in the context of the administrative inquiry (F. 288315).

In fewer but indicative cases, discrimination appears on the grounds of **ethnic origin (Roma)**: During identity checks, arrests and indictments, discrimination and/or exercise of violence during the verification, and even administrative violations²⁶.

23 ECtHR Decision *Salman v Turkey*, 27.06.2000, paragraph 99.

24 ECtHR Decision *B.S. V Spain*, 24.07.2012 on the issue of intersectional discrimination, in breach of Article 14 of the ECHR, in combination with Article 3 on the police officers' behaviour against a woman of African descent.

25 Tracking of minor aliens, as victims or witnesses, 1 - 3 years after the incident. See 2019 EMIDIPA report p. 97.

26 See the section on coronavirus compliance monitoring below.

In a case of the arrest of a Roma citizen at a Police Station in the Pe-loponnese on traffic violations, the National Mechanism found that the person conducting the PDE did not make any assessment of the contents of the certificate from the General Hospital that found various bruising and contusions, nor did he consider the photographs provided by the complainant which proved the injuries he had suffered. Moreover, no other witnesses were sought who could testify about the incident, which took place in the morning at the city centre. At the same time, the statements of the police officers were identical (F. 261027).

Cases of arbitrary behaviour due to **religious beliefs** are less common or better disguised (F. 287825, F. 277945), whereas arbitrary behaviour on grounds of **sexual orientation, sex characteristics, or gender identity** are actively reported by alleged victims and organisations (F. 272558, F. 273659, F. 284853, F. 288912, F. 284584, F. 281505), a fact that is expected to contribute towards reducing the grey number of relevant cases which still deal with deep-seated prejudices in Greek society. Besides, the grounds of discrimination that the law names in incidents of arbitrariness reflect the deep-rooted prejudices that *“continue to feed on our individual and collective consciousness, namely the divide between ‘us’ and ‘them’.”*²⁷ The analysis of these cases will be carried out with the issue of the National Mechanism’s findings, when the Administration’s relevant PDA or EDE are completed.

The Ombudsman’s experience shows that it has not been widely understood that policing based on the characteristics of a person belonging to a social group or minority (racial profiling) is both prohibited, as discriminatory,²⁸ and ineffective²⁹ policing.

In findings that were addressed to ELAS, the National Mechanism clarified the following:

— The **definition of treatment that is discriminatory or has a racist motive** does not presuppose that the cause of discrimination has been expressed in words; besides, this arises from the relevant wording of the law on incidents of arbitrariness: *d. unlawful conduct for which there are indications that it was carried out with a racist motive or which presents an implicit element of any other kind of discrimination on*

27 See Ombudsman’s introduction to the Equal Treatment - Special Report 2019: <https://www.synigoros.gr/?i=equality.el.reports.651378>

28 See in particular Article 2 paragraph 1, Article 5 paragraphs 2 and 3 of the Constitution, Article 21 Charter of Fundamental Rights of the European Union, Article 11 paragraph 3 Directive 2016/680/EC, on the protection of natural persons with regard to the investigation of criminal offences, The European Code of Police Ethics, paragraphs 43 and 49, Rec (2001)10 of the Council of Europe: <https://rm.coe.int/16805e297e>, Order no. 7100/4/324.5.2006 of the ELAS Headquarters, General Policy Recommendation No. 11 of the European Commission against Racism and Intolerance (ECRI) of the Council of Europe on combating racism and racial discrimination in policing: <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/recommendation-no.11>, FRA, Guide to preventing unlawful profiling, 2018: <https://fra.europa.eu/en/publication/2018/preventing-unlawful-profiling-today-and-future-guide>.

29 Given that individuals of this group are marginalised. According to FRA (ibid, p. 11, 49) this group is over-represented in the percentage of criminal case files that are created by the Police, thus raising the issue of statistical accuracy in criminal data.

*the grounds of race, colour, national or ethnic origin, descent, religious or other beliefs, disability, or chronic disease, family or social status, sexual orientation, gender identity or characteristics”.*³⁰

— Other than the specific penal law (Law 927/1979, as in force) and the racist motive as an aggravating circumstance (currently Article 82^A of PC, Article 10 Law 4285/2014), the legal order also contains **the concept of harassment which constitutes discrimination**: “Harassment is unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual” (Law 4443/2016, Article 2, item c). According to the Council of Europe’s Commission against Racism and Intolerance,³¹ it is significant that the victim or any other person perceives a behaviour as racist. In the case of an identity-check of a young man of Albanian origin in the centre of Athens, the Ombudsman forwarded a relevant PDE for various reasons, commenting that the fact that the injured party perceives police behaviour as unethical because he believes that he was the target of “racist innuendos”, is critical and should not be dismissed as mere “jokes” made by the Police officers (**F. 270702**).

— According to the **case-law of the European Court of Human Rights (ECtHR)**, even when an instance of behaviour is not of the required violence or gravity to be considered inhuman and degrading according to Article 3 of the ECHR when this is directed towards an individual because they are of a particular ethnic origin/minority, this constitutes a **violation of the respect of private life according to Article 8 of the ECHR** in the sense of ethnic identity, because **negative stereotypes can affect a person’s self-esteem and self-confidence as a member of a national community**. Hence, in case of complaints of harassment with a racist motive, state authorities are obligated to investigate whether there was a similar motive and whether any national hatred or prejudice played a role in the events.³²

30 Item d. paragraph 1 Article 1 Law 3938/2011, as replaced by Article 188 of Law 4662/2020.

31 Ibid. General Policy Recommendation No. 11, paragraph 14.

32 ECtHR Decision R.B. v Hungary, 12.04.2016, para. 78.

3.2. COVID-19 compliance monitoring³³

Complaints of violence that arose during COVID-19 compliance monitoring, which largely concerned vulnerable groups, were added to the above group of incidents. For most cases that are under investigation, the review by the competent disciplinary bodies has yet to be finalised. These incidents primarily took place during the first days of COVID-19 curfew and are being investigated from the perspective of racist behaviour. The Mechanism was informed about these incidents primarily through NGOs, which provided legal support to the specific population groups, provided them with complete information, and facilitated their lawful movement. Especially for refugees and migrants, the observance of the restrictions was unbearable because, among other things, they were forced to be enclosed in a very small space, with many people, 24 hours a day.

Indicative cases that fall under this category include:

Complaint of physical violence against **aliens and asylum seekers in Samos and Athens**. The first of these, when going to the supermarket, did not have a movement text message. According to online reports, the reaction of the police was aggressive; he was punched in the face, and then, under the threat of violence, he was forced to sign a document in Greek, which he did not understand, and was taken to the police station. This case was investigated at the disciplinary level, and it is proposed, according to the finding of the PDE, that it be dismissed due to lack of evidence to support allegations of violence. The review of the report of the findings by the Mechanism is pending, but it is worth noting that the PDE report considers the racist motive of the police, by providing details on the checks carried out on that day, to determine whether persons with specific characteristics were being targeted. The second, a foreign pupil, was checked while travelling to Sunday School for Immigrants. According to the complaint made by the School, the police pushed him and violently pinned him to the wall. They conducted a humiliating public body check and beat him when he told them that he wanted to call his lawyer (**F. 278647**).

A similar incident is reported concerning a young Greek woman in Karditsa, particularly during the administrative check to determine the legality of her movement. She was allegedly pinned to the ground by police officers, who handcuffed her (**F. 288732**). This incident is also being investigated at the disciplinary level.

During the identity check of **young Roma individuals (F. 278478)**, who had gathered despite the COVID-19 curfew, the complainant, who has a mild intellectual disability and had never bothered the police authorities, became frightened fled the scene when he saw the police. Nevertheless, two police officers caught him, threw him face down on the patrol vehicle while concurrently beating him and slapping him on the head for about ten minutes. The incident ended with the complainant being issued an admin-

33 The Ombudsman handles a large volume of complaints related to Covid-19 measures by citizens (see Annual Report 2020), which were reviewed for observance of the substantive legality of the Administration's action, but also for the procedure that followed the imposition of fines. The Mechanism for Incidents of Arbitrariness dealt with a small number of these, where complaints were filed for violence or infringement of personal dignity by police officers.

istrative fine for violating the curfew and the departure of the police officers who had arrived in four patrol vehicles. The next day, the complainant went to the hospital. Seeing the injuries, he had sustained, the doctors fitted him with a cervical collar and recommended taking medication for ten days.

Without any apparent legal reason, **the bringing of individuals to the police station is a general practice that the Mechanism has observed** (see 3.3 below). A typical example is that of an alien who was brought to the police station in handcuffs despite having all the legal movement paperwork. As he reports, he underwent a body check, beating, and humiliating behaviour for 30 - 40 minutes and was then allowed to leave. A PDE, which the Mechanism is monitoring, is being conducted into these cases.

3.3. Apprehension and detention with or without arrest

Given many complaints, the Mechanism examined the conditions under which the police arrested citizens and the observance of the conditions of legal detention at police stations, regardless of whether it eventually leads to an arrest. It has been stressed that the high level of crime in a specific public area and combating of this crime justifies enhanced policing and intervention when and where this is necessary. Still, not all citizens in the area must be presumed to be suspects. Citizens are not obligated to associate their physical presence in a public space with a “legal” purpose (F. 253613). Suppose a citizen is brought to the police station. In that case, the reasons behind this action must be clarified, even if this apprehension is part of a targeted action.

As to **apprehension for an identity** check, the police have the power to investigate whether an individual is being prosecuted; however, this must be done with the least possible inconvenience, i.e., without restricting his personal freedom, especially when there is no evidence to support the suspicion that a crime has been committed. Every effort must be made for the verification of the individuals’ judicial identity on the spot via an online application, particularly when the individuals have their identification documents with them (F. 253613).

The practice of bringing individuals to the police station without any apparent legal reason and in violation of the terms of Article 74 paragraph 15 case ix PD 141/1991,³⁴ is observed by the Mechanism in many cases. In one case that was examined (F. 282385), it was ascertained that, following a protest march against the bill on public outdoor gatherings, and although no evidence was found against the complainant or other citizens following an identity check, a body check, and an individual backpack check, they were all taken to GADA, and after police files with complete information were created for each of them, they were taken to the holding cell where they remained

34 Pursuant to which the competent officer “takes individuals to the police station for examination when they lack evidence of their identity or who, because of the place, time, circumstances and conduct, raise suspicion of conducting a criminal act”.

for about four hours. A similar incident is reported by an individual (F. 277132) who was checked by DIAS police officers in view of the movement ban. Although he had all his legal documents with him, the police officers insisted on taking him to the nearest police station.

The apprehension and detention of the suspect, the handcuffing and excessive limitation of freedom, is an onerous, coercive measure, which must be carried out with respect for human dignity and the individual rights of the citizen but must also be governed by the principles of necessity and of proportionality. The Mechanism has requested the examination into the conduct of the police, in the light of committing the offences of Article 137^A paragraph 1 b and c and 137^A paragraph 6 of the new PC.

In another two incidents, which are being investigated by the EMIDIPA following complaints by individuals, there are infringements of personality and violence during their arrest and being taken to the police station. In the first case (F. 289100), the incident arose during a traffic violation check. The complainant states that the police officers addressed him with insults and threats and then used unnecessary physical violence against him, all while he did not resist. In the other (F. 288237) case, the incident occurred during the complainant's arrest for her to be brought for a psychiatric examination. The complainant resisted arrest because she was not shown the relevant court order. As a result, she was subjected to violence during her arrest and, later, at the police station she was taken to. The Mechanism is monitoring these two cases and is awaiting the findings of the disciplinary investigation. Concerning the second case, the Mechanism has observed that its investigation had undergone a long delay (the incident appears to have occurred in 2015) and has requested the expedited processing of the disciplinary investigation.

Focus needs to be placed on the case of a **minor (F. 260871)** who was heading to school when four (4) police officers from the Drug Enforcement Department stopped him and took him to the Security Sub-directorate in a city of the region of Thrace. He was held there for three hours, at which time they stripped him down, they carried out a body search and interrogated him while exerting intense psychological pressure on him and insulting him. It should also be mentioned that his parents were not notified, nor were they informed of the incident in a timely fashion. The pupil was released because they did not find anything on him; however, he has been monitored by a psychologist since then. The finding of the EDE that was brought to the attention of the Mechanism proposes the dismissal of the case. The Ombudsman forwarded the PDE finding for supplementation, given that the procedural safeguards for children have not been observed according to the KPD. The child is also protected by the ECHR and the United Nations Convention on the Rights of the Child (UNCRC), which provide a network of safeguards for children who are suspects or accused persons in criminal proceedings, due to the vulnerable position they are placed in during their apprehension, arrest, or detention. Among other things, the child has the right to legal counsel and the right to have a person of his choosing notified of his detention. In addition, Article 40 paragraph 2, subparagraph III of the UNCRC provides for the presence of the minor's parents, unless it is considered not to be in the best interest of the child.

3.4 Use of a firearm (while on duty or in abuse of power)

The Mechanism also intervenes in the illegal use of a firearm (Article 1 paragraph 1 Law 3938/2011, as replaced by Article 188 of Law 4622/2020) by a police officer. The cases that the Mechanism has monitored can be divided into two broad categories. In the first category, the investigated police officer is on duty and is investigated for using his firearm during the execution of his duties, e.g., an arrest or a chase.

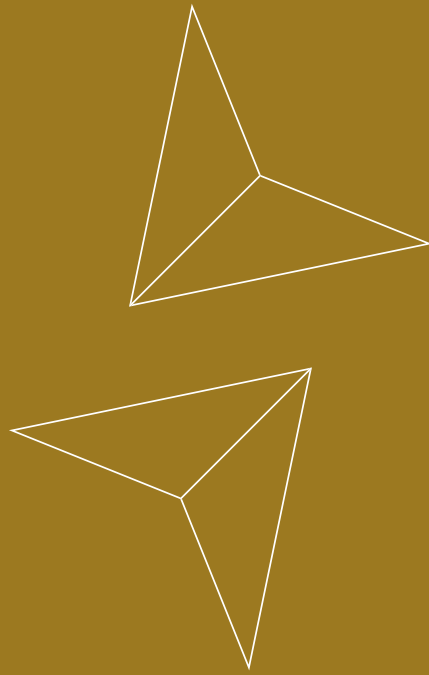
There may be intentional or negligent use of the firearm. In such cases, in the context of the disciplinary procedure, the Mechanism requests that it be checked whether the conditions for the proper use of the firearm were observed, i.e., whether the principle of proportionality was observed; whether the police officer selected the least intrusive means for the occasion; whether the officer had ensured the correct and safekeeping of the firearm; whether the officer had fired a warning shot; whether the officer had considered the risk of injury to bystanders, etc.

A case of the negligent use of a firearm while on duty was investigated (**F. 275729**) in an incident outside the residence of a guarded person. The police officer assigned to this post had illegally invited a third person to the duty vehicle during his shift. In a state of intoxication and not knowing that the firearm was loaded, he claims he fired it, resulting in the injury of a bystander. An EDE was carried out regarding the incident. The finding proposed that the investigated officer be referred to the competent Disciplinary Council with the question of imposing leave with dismissal from duties.

The second category concerns the use of a firearm in off-duty situations, but with abuse of power. In the following situations, the violation of Law 3938/2011 is combined with other criminal acts committed by police officers. In February 2020, the Mechanism received (**F. 274744**) the investigation of an incident which took place in December 2019, during which the accused police officer verbally reprimanded a parked driver. He then got into her car, violently tried to pull her mobile phone out of her hands and broke her glasses. To get away, he stole a nearby motorcycle after threatening its owner with a privately-owned gun and fled. It is worth noting at this point that although an EDE was immediately ordered, the finding has yet to be issued. A delay is also observed in the investigation of a police officer who, after a disagreement with a civilian with whom he was friends, frightened the civilian in question by displaying and arming his duty weapon, caused bodily injuries, and refused to leave her residence (**F. 276488**). The Mechanism is monitoring the developments of the above cases.

Added to this category is a case in which an off-duty police officer used his firearm (**F. 275402**). The officer under investigation fired at a driver inside a vehicle to kill him. Among other crimes (attempted murder, etc.) the competent disciplinary body is also investigating the use of a firearm. Upon completion of the EDE, it concluded

that the police officer should be referred to the first instance disciplinary council, with the question of imposing the disciplinary penalty of dismissal.



4. The interventional role of the National Mechanism for the Investigation of Arbitrary Incidents (EMIDIPA)

4. The interventional role of the National Mechanism for the Investigation of Arbitrary Incidents (EMIDIPA)

— **Pending staff reinforcement, which was legislated by Article 188 Law 4662/2020**, will allow it the use³⁵ of the institutional tool of independent investigations. The National Mechanism (EMIDIPA) intervenes by providing basic guidelines to the Administration's disciplinary investigations. On the one hand, once the Ombudsman is instructed to carry out a PDE or an EDE for incidents of arbitrariness, the first document that the Independent Authority addresses to the Administration points out the essential elements that should be included in this investigation for it to be considered thorough and comprehensive according to the case-law of the Greek Courts and the European Court of Human Rights (ECtHR). On the other hand, concerning the ever-increasing number of reports of incidents of arbitrariness that are submitted to the Independent Authority by citizens, the Ombudsman forwards these reports to the Administration, highlighting, where necessary, the points of the relevant complaints that need to be investigated in terms of rights violations. In both cases, the objective is for the National Mechanism to receive comprehensive files upon completion of the administrative investigation. In any case, the Independent Authority is required by law³⁶ to review the finding and the investigation file and may forward the investigation to the Administration if it deems that it needs to be supplemented. Administration cannot deviate from the Ombudsman's report of findings without a specific and thorough justification.

In addition, reserving the right to conduct its own investigation, in some cases the Ombudsman requests information from the investigator in advance to further assess the actions of the Mechanism, particularly in the case of large-scale incidents, where numerous parameters need to be clarified. With respect to this issue, the experience from the relevant investigations that were ordered by ELAS at the end of 2019 and

35 See chapter 7.1 below on the amendment of the legislation.

36 Article 1 paragraph 4 Law 3938/2011, as in force (*See Annex I below, Article 188 Law 4662/2020*).

concerned controls and incidents in Athens around 17th November and 6th December 2019, it would be useful for the gaps in the cooperation with the National Mechanism and the marked delays to be eliminated in the future as presented below.

4.1. Lines of inquiry - Complaints forwarded for disciplinary investigation.

In several administrative examinations with a wide scope, such as the extent of **violence exercised during incidents, the use of tear gas, apprehensions and/or conditions of personal injury**, the Ombudsman makes a point of giving ELAS a heads up about the **prerequisites of a thorough investigation**, which appear in the findings of the National Mechanism as shortcomings of the administrative investigation, despite arising from the case law of the ECtHR:

The necessary distance should be maintained between the person performing the PDE and the investigated persons, which constitutes a basic guarantee of formal impartiality.

- The alleged perpetrators of culpable and illegal acts should be identified among those on duty on the specific day and time; it should be examined explicitly whether they carried identification during the operations; clarifications to be given regarding the orders or related actions or omissions by the head of the operations.

- Relevant photos and video material from security, traffic, or other cameras should be collected and safeguarded.

- An investigation should be conducted into the necessity of the use of violence, restraints and tear gas and the complaints of the accused during the incidents regarding their apprehension and detention.

- The relevant recordings of conversations between the duty police officers and the dispatch communication centre should be utilised.

- As many witness statements should be taken as possible from the police officers or third parties that were present; eyewitnesses must be sought, especially those referred to as eyewitnesses in the media articles and those who, according to the media, sustained violence from police officers.

- Any criminal case files related to these acts should be sought.

- Medical/forensic reports from the alleged injured persons should be ordered and utilised; also, doctors/medical examiners should clarify by way of a sworn statement both the severity and the possible causes of the injuries, for comparison with the complaints and the statements.³⁷

37 See ECtHR Decisions 26.04.2018, *Andersen v Greece*.

The Ombudsman also points out in advance that **the timely completion of the relevant internal investigation is crucial for the credibility of the disciplinary system**. Among others, one typical example is the delay that is observed in the investigation of disciplinary liabilities, following lawsuits filed by citizens against police officers of the Attica Police Operations Directorate (DAEA), for crimes against their physical integrity during incidents that allegedly took place in Chios (**F. 276044**) in January 2020. Although the Mechanism was notified of the order for the EDE in March 2020, no progress has been observed to date, and nor has there been any response to a recent document issued by the Mechanism which requested that the process be expedited.

The Ombudsman pointed out the above in investigations into **cases in 2020** which, up until the end of the year, were ongoing regarding various incidents (**F. 288646**, incidents in Galatsi in November, **F. 289235** and **F. 290226** incidents on the anniversary of the Athens Technical University uprising, etc).

In addition, in cases of **physical harm to persons who were apprehended**, the Ombudsman points out the relevant case-law of the ECtHR for the burden of proof that befalls the police authorities regarding the reasonable measure of violence, as their liability is presumed in cases of physical harm to persons that are detained, arrested or generally under the control of the police.³⁸ (**F. 278405**, incidents in Kypseli in May 2020, upon referral of the Minister of Citizen's Protection). In the case of the complaint of **violence in the police holding cells against those apprehended** (incident at Sepolia in November 2020), the Ombudsman pointed out that, according to relevant ECtHR case-law, the recording and maintenance of any material from the police station's surveillance system is necessary for a thorough and comprehensive investigation.³⁹ (**F. 288914**).

At the same time, in cases such as those mentioned above, subject to conducting its own investigation, from the outset the Ombudsman requests some details from the investigating officer, upon receipt of each piece of evidence, to assess the further actions of the Mechanism, such as:

- recorded conversations with the operations centre
- relevant video material from security, traffic, or other cameras
- the injured parties' medical/forensic reports.

However, of the 2020 investigations that are in progress for large-scale incidents, only in one case (incidents in Galatsi, **F. 288646**) was there an immediate response to the Ombudsman's request to the investigating officer.

In addition to the large-scale incidents, the intervening role of the National Mechanism

38 Decision for *Zelilof v Greece* on 24.05.2007, et al.

39 ECtHR Decisions *Nachova v Bulgaria*, 06.07.2005, *Milic and Nikezi v Montenegro*, 28.04.2018, *Konstantinopoulos v Greece* 22.11.2018 for the effective investigation.

from the initial stage of the Administration's investigation⁴⁰ is expressed with individual flagging, where necessary, from the scope of the PDE or EDE mandate, which the Administration forwards, e.g., investigation of racist motives due to ethnic origin of those apprehended/arrested (**F. 278242, F. 285259, F. 284856**) or to the alleged threatening of migrant workers (**F. 282723**), investigation of discrimination on the grounds of gender (**F. 284854**), necessary care for the best interest of minors (**F. 285976**), evaluation of medical certificates concerning the cause of the injuries compared to the complainant's allegations (**F. 282396**), the Authority's observations on the legal requirements for personal checks (**F. 285527**), etc.

In addition, when cases filed by citizens to the Independent Authority are forwarded to the Administration, the Ombudsman often points out, where necessary, the points of the relevant complaints that need to be investigated in terms of violations of rights and the procedural safeguards to ensure the completeness and objectivity of the investigation. Examples: Every necessary measure should be taken for the protection of the detained complainants and witnesses, and in the case of minors, consideration should be given to transferring them to another detention area or protective custody (**F. 278283**), any video footage from holding cell surveillance cameras should be immediately safeguarded (**F. 278283**) or from street cameras (**F. 286188, F. 286850**), the revised regulation of Article 137^A of the PC should be considered. (**F. 278283**), the investigator of an abuse complaint must maintain the necessary distance from the involved parties (**F. 275300, F. 279246**), child witnesses need special treatment (**F. 286850**), the racist motive towards asylum seekers and aliens should be investigated (**F. 275300, F. 279246, F. 278283, F. 286188, F. 283807**), copies of the Police Department's Book of Offences and Incidents and Detainees should be provided; the list and details of officers on duty who brought in an asylum seeker alleging abuse should be provided by the Police Department. (**F. 277132**), etc.

With the above actions, the Ombudsman plays a decisive role in safeguarding the right of petition for incidents of arbitrariness.

4.2. Investigation of checks and incidents in November and December 2019

In the cases related to incidents in marches and police checks in November and December 2019, the Ombudsman requested⁴¹ a thorough investigation into the complaints that came to light and specific data, to assess its own actions for the further course of the investigation; however, without receiving the necessary response from the ELAS services, as presented below.

A) Cases pertaining to 17th November 2019.

40 And not only at the completion stage of the PDE or EDE and receipt of the file by the Administration for the Ombudsman's finding regarding its completeness.

41 Ombudsman's Office 08/15.01.2020.

ELAS forwarded several orders for a PDE to the Ombudsman relating to specific incidents of ill-treatment or injury of citizens in November 2019, including the episodes of violence on the anniversary of the Athens Technical University uprising.

1. In these cases, the Ombudsman highlighted the prerequisites for a thorough investigation and the guarantees of impartiality arising from the relevant case law⁴² and asked to receive the following elements in advance to assess its further actions:

- the involved police officer.
- the relevant camera footage
- conversations with the operations centre
- the forensic reports.

TU until the end of 2020, this information had not been forwarded to the Ombudsman, despite the reminder that was sent on 21.07.2020. We need to emphasize to the ELAS services that they are required **to comply with their explicit legal obligation to provide the National Mechanism with information it deems necessary for its investigation**. Non-compliance with this requirement (Article 1 paragraph 4 Law 3938/2011, as in force) is contrary to the legislator's intention for an independent parallel investigation of incidents of arbitrariness by the National Mechanism.

2. Moreover, the Ombudsman requested information on whether ELAS was investigating other incidents which have been brought to the attention of the Authority and for which there are published information, photographic and video material, as this arises from online publications that it forwarded to ELAS. This is similar information that is reproduced in several publications and posts regarding the incidents on the anniversary of the Athens Technical University uprising, complaints by a journalist and injured parties on that day, the use of tear gas to disperse crowds that had gathered outside the Athens 1st Instance (Evelpidon) Courts on 18.11.2019, complaints regarding the alleged unprovoked attack on students of the Athens University of Economics and Business on 11.11.2019 etc. ELAS responded in April 2020 by saying that most publications were covered by other investigation mandates except for the incidents at the Evelpidon Courts and the Athens University of Economics and Business, for which an administrative investigation was not required. With respect to these two incidents, ELAS considered the actions taken by its police officers to be lawful, based on the relevant official reports. The Ombudsman believes that **the formation of this opinion should have been the conclusion of a preliminary investigation (PDE)** rather than a reason not to investigate these public complaints.⁴³

3. Nevertheless, in 2020, the Ombudsman received the **findings of some of ELAS' PDEs about the incidents of 17 November 2019**. In the conclusions of one PDE,

42 See chapter 4.1 above.

43 See chapter 5 below on the issue of an informal investigation.

the alleged protester considers the incident to be the result of a misunderstanding, most probably the exaggerated alertness of the police around Exarchia and does not desire a disciplinary investigation into the police officers in question (F. 271378). In another PDE, the alleged protester stated that his injuries were not severe, and he did not need to visit a doctor. In the second case, however, the Ombudsman forwarded the investigation to ELAS with the observation that in the reasoning of the PDE's finding it states that there was no attack on "other citizen", a finding that is unjustified firstly because it is outside the limited scope of the investigation concerning the attack on that citizen, and secondly because the injured party was not asked about any attacks on other citizens. The specific PDE should otherwise have included the investigation of other incidents (complaints of a journalist and injured persons on 17.11.2019), regarding which the Ombudsman had referred the Hellenic Police, as mentioned above, to specific publications and internet posts with photographic and/or video material (F. 272727). ELAS responded by ordering the supplementation of the PDE with the investigation into all these complaints. The supplementary investigation is pending.

4. Of the pending PDEs, the case of an alleged serious injury to a student on 17.11.2019 has not been finalised (F. 271379). Also pending is the case that was submitted to the National Mechanism via the attorneys of 3 citizens regarding their apprehension and detention at GADA on 17/11/2019 (F. 274521). When forwarding the report to ELAS for correlation with an existing PDE (F. 271382), the Ombudsman made a detailed reference to the issues raised by the complainants and in need of investigation, such as the excessive use of violence; the humiliating conduct until their transfer to GADA; the photos taken with the police officers' mobile phones in a private area during their apprehension, regarding which the relevant video footage from security cameras was transmitted to the investigator, and to which the interested parties gained access via a court order; their delayed transfer to GADA, where they remained for hours without knowing why they were being held, without being informed of their rights and without contacting a lawyer or a relative (Article 95 – 98 CCP), compliance or non-compliance with the conditions for the legal conduct of a body search (Article 257 paragraph 2 CCP) in 2 reports, the conditions for causing bodily harm during the arrest of the 2nd complainant and the alleged omission of the GADA authorities to immediately respond to her request for a doctor, according to the report. Following the National Mechanism's detailed report on the investigative issues in April 2020, the complainants' attorneys informed the Authority that their clients were summoned to an administrative inquiry by ELAS. At the time of writing this report, the results had not been transmitted to the National Mechanism.

Of the relevant cases that are still pending, interestingly, two cases wherein **public humiliation of young people in the centre of Athens** had been reported in online publications, the inquiries that ELAS had ordered for the investigation of "ill-treatment" and "inappropriate behaviour" by the investigated persons were fruitless because, as mentioned by the authors of the relevant publications, the alleged victims have not provided their details given that they are afraid to testify. Subsequently, in collaboration with the authors, the Ombudsman investigated whether the refusal of the alleged victims could be bypassed and whether they were interested in giving their details and

statement to the Independent Authority (F. 271381, F. 272697), without response from the media in question.

B) Squatting raid on Koukaki residences in December 2019

The National Mechanism requested information from ELAS on whether an administrative investigation has been ordered into complaints to the media regarding the actions of police officers during a police operation to evacuate squatted buildings in Koukaki in the morning hours of 18.12.2019, on Matrozou, Arvali, and Panaitoliou Streets in Athens. ELAS responded by saying that, other than the transmission of the relevant publications to the Athens Public Prosecutor, further to the execution of a court order, it ordered a PDE on 16.01.2020. The National Mechanism is monitoring the conduct of the relevant PDE, which is pending; however, it has since requested – on two occasions – the evidence included in the relevant criminal case file that ELAS created, without its being forwarded by the PDE investigator as yet (F. 273254). This delay gives rise to **reasonable questions about whether ELAS is willing to cooperate with the National Mechanism** on this crucial case, with respect to personal freedom and other fundamental rights. The Ombudsman came back to this issue by requesting further details, drone videos, and the attachments to the case file, and ELAS responded that the details will be requested and sent along with the PDE finding.

C) Cases pertaining to 6th December 2019

With respect to events that took place in the centre of Athens and other cities, to honour the memory of Alexandros Grigoropoulos on 6 December 2019, ELAS immediately notified the Greek Ombudsman that an EDE had been ordered. The Mechanism requested that the EDE be supplemented with the investigation of other incidents, as these had been recorded in online publications that it disclosed to ELAS and on a DVD which had been received by the Mechanism (F. 271058), and an official complaint that had been received by the Authority (F. 271112). However, the assignment of the EDE which followed, and which was notified to the Mechanism does not specify the scope of the investigation to determine whether the additional incidents that the Ombudsman has requested have been included in the disciplinary investigation.

In October 2020, the Authority was informed that the disciplinary investigation has been “suspended” due to the formation of a criminal case and the conduct of a preliminary examination in this context. Until then, no disciplinary investigation had been carried out; only the details of the criminal case file had been requested by the person conducting the EDE.

The Authority pointed out to ELAS that the disciplinary trial is separate and independent of the criminal trial or any other trial. The possibility of suspending the disciplinary investigation due to a concurrent criminal trial for the same case is described in Article 48 of PD 120/2008 as a possibility that should be applied as an exception and under strict conditions. The Authority expressed its severe reservations as to the legality of the disciplinary bodies’ idleness and their vague invocation of the formation of a criminal file.

The Greek Ombudsman requested that the investigation of all the events related to the events of 6th December 2020 be initiated immediately. An update regarding the progress of the disciplinary inquiry be forwarded monthly.

Moreover, it was pointed out that at no stage of the procedure did ELAS issue the details that were requested by EMIDIPA, in particular:

- list of squads operating at the locations of the episodes and the squad leaders, as well as the number of patrol vehicles,
- details of the involved police officers and the identification on them,
- the relevant camera footage,
- conversations with the operations centre,
- forensic reports, medical certificates, witness statements.

In February 2021, EMIDIPA received the findings of the EDE report (**F. 271058**), which was completed in **December 2020** and calls for the dismissal of the case given that there was insufficient evidence to support a disciplinary or criminal offence against the involved police officer. The police officers and the squad that participated in the events were identified in the above finding *“as they appear in the selected audio-visual material”*. Concerning the recording of the conversations between the operations centre and the duty officers, the Police alleged that the wireless conversations of the Hellenic Police are protected by the privacy and confidentiality of communications, which can only be removed with a court order. Searching for the video material is impossible because, as mentioned in the Police report, by decision of the Hellenic Data Protection Authority and is only kept on the recorders for seven days. Also, there are no forensic reports of persons arrested on that day. EMIDIPA is reviewing the above findings report and will prepare its findings on this report in the context of its competence.

In conclusion, in these large groups of cases in 2019, the collaboration between ELAS and the Ombudsman generally exhibits delays and/or gaps. When the National Mechanism shows persistence on individual cases there is a response (see above **F. 272727**). **The Ombudsman insists on the need for substantial collaboration**, pointing out the extent and repetitive nature of the reported incidents, regarding which the Administration’s internal investigations should be thorough in order not to jeopardize their credibility.

4.3 Referring the unjustified deviation from the National Mechanism’s reports of findings to the Minister

Based on the position that the National Mechanism for the Investigation of Arbitrary

Incidents aims to conduct an independent investigation into incidents of arbitrariness, which does not replace the Administration's internal disciplinary investigation, the Ombudsman's competence was empowered from the outset⁴⁴ with the institutional guarantee of not excluding the Administration from the operative part of the Independent Authority's findings, except with specific and thorough reasoning.

The new provision of Article 188 Law 4662/2020 added to this point⁴⁵ that, if the Ombudsman finds an inadequately justified deviation from his report of findings, at every stage of the disciplinary procedure, he informs the competent Minister accordingly, for any actions to be taken by the Minister, as the disciplinary head of the uniformed personnel. This provision encompasses any kind of investigation within the competence of the National Mechanism, i.e., report of findings that have been drafted following its investigation, forwarding of a case to the competent agency, or monitoring the administrative inquiry. According to the Law's explanatory report, this new regulation is "*a substantial safeguard for the Administration's internal investigations*" and aims to consolidate the full reasoning as a necessary element of disciplinary investigations in a state governed by the rule of law.

The Ombudsman made use of this new provision by referring four (4) cases to the Minister for Citizens Protection in 2020, given that it deemed that ELAS' deviation from its findings was unjustified. In particular:

1. – With respect to the use of a firearm and injury of a supermarket robber in Attica (F. 254783), the Ombudsman's findings pointed out the need to obtain and utilise evidence that was absent from the initial EDE, such as the expert report and photographs from the areas of the passenger vehicles that sustained damage; the results of material that the Forensics Department confiscated in order to determine the exact number of shots of the injured perpetrator; and to justify the police's characterization of "immobilisation shots" based on the medical opinions of the injured party, etc. However, the investigator did not take the Ombudsman's points into account with respect to evidence and proceeded with additional written explanations and new statements from police officers during the supplemental investigation that was sent to the National Mechanism. In his letter to the Minister, the Ombudsman notes the non-substantiated reasoning in the completed EDE regarding the non-collection and evaluation of the above evidence, as well as the insufficient justification as to the classification of the shots as "immobilisation" shots and as to the use of milder means, i.e., the observance of the principles of necessity and proportionality, which are imposed by Law 3169/2003 for the use of a firearm by police officers and the relevant ECtHR case law.

2. – Concerning the reported use of violence against a minor, who was apprehended on suspicion of theft in Thrace (F. 243154), various issues needed to be investigated, including the apprehension, pre-interrogation, transfer of the minor in a service vehicle by the involved police officer in the evening hours without being accompanied

44 Law 4443/2016, article 56.

45 Article 1 paragraph 4 Law 3938/2011, as amended and in force.

by another person, as well as the injury of the minor. The Ombudsman forwarded the administrative inquiry to the service on two occasions and received a second completed EDE without any supplement in the account of the incident, just in the reasoning. In his letter to the Minister, the Ombudsman noted that the reversal of the burden of proof for the injury of a person in the hands of the police was not considered during the investigation. According to ECtHR case law, State authorities are obligated to provide satisfactory explanations for the causes of injury of this person, regardless of whether a criminal court acquits the police officer.⁴⁶ The Ombudsman notes the wider scope of the disciplinary proceedings in relation to the criminal trial and the implausible claim that the minor's injury occurred in the short period after getting out of the security vehicle and until his transfer to hospital.

3. – With respect to the exercise violence against detainees at a Penitentiary Facility during the raid by a special ELAS unit in 2018, which was reported by the Council of Europe⁴⁷ (F. 249152), in its first report of findings, the Ombudsman had found significant shortcomings in the PDE that was conducted as to the witnesses, medical certificates and book of offences and incidents; as to the justification for the need to exercise a forceful raid, and the specific violence that was exercised on the detainees; and as to the evaluation of the video footage. Nevertheless, the investigation that was completed by ELAS continues to present incorrect or non-existent reasoning in some areas, given the shortcomings in evaluating the video footage from inside the prison both in terms of its duration and in terms of the specific individuals and actions that it shows. In its letter to the Minister, the Ombudsman also states that, in the finding of the completed investigation by ELAS, apart from the incomplete reasoning for the beatings of detainees, it was not understood that the disciplinary trial is separate and independent of the criminal trial and that brutality, as a disciplinary offence, is unrelated to the typology of Penal Code offences. The Ombudsman pointed out the established ECtHR case law on conduct that falls under Article 3 of the ECHR, because it constitutes inhuman or degrading treatment, but also on the need for specific reasoning for the measure of violence exercised in a planned or unplanned police operation in a prison.⁴⁸

4. – Concerning a detainee's complaint to the Ombudsman regarding the collection of DNA by force and severe attack on his human dignity (F. 237463) by police during his transfer, the National Mechanism initiated an independent investigation and requested the disciplinary investigation into the incident. Despite the relevant authorisation of the Hellenic Police Headquarters order dated 02.08.2018, the PDE in question was assigned to a police officer who was administratively linked, at Directorate level, to those involved in the case. The submitted PDE was forwarded by the Ombudsman for supplementation and upgrading. In its finding,⁴⁹ it requested specific information from ELAS and pointed out serious shortcomings in the investigation conducted regarding the authorities' obligation to document the causes of the detainee's injury, and the relevant case law, of both the ECtHR and the Civil Supreme

46 ECtHR *Karagiannopoulos v Greece*, 21.06.2007, et al.

47 Committee for the Prevention of Torture (CPT).

48 ECtHR, *Konstantinopoulos v Greece*, 22.11.2018 (see chapter 6 in detail below).

49 See details about this finding in the EMIDIPA Special Report 2019, p. 50-52, www.synigoros.gr.

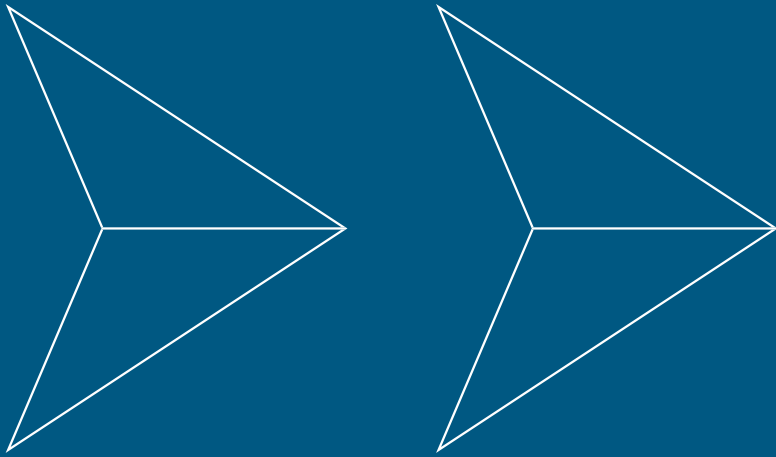
Court, for the collecting of genetic material and the conditions for conducting the relevant expert opinion. The competent Chief (of the involved police officers) decided to dismiss the case, accepting the proposal of the person conducting the problematic PDE and bypassing the obligation of a specific and thorough reasoning for the deviation from the Independent Authority's finding. At the same time, the Ombudsman received a separate document which provided only two (2) of the requested items, while the rest were either provided incorrectly or negligently omitted. In the same document, the police considers that no further judgement is necessary due to the dismissal of the complainant's lawsuit, ignoring, however, that the disciplinary trial is independent from the criminal trial, and without considering the evidence of the complaint which was under disciplinary investigation (irrevocable acquittal for the complainant's resistance, medical reports of his injury). As it states in the relevant letter to the Minister, the Ombudsman not only insists on the merits of its findings,⁵⁰ but also on the need for all the separate concerns in its report of findings to be answered specifically and to be documented, for any deviation from the Ombudsman's report of findings to be allowed subject to "specific and thoroughly" justified reasoning, as required by law.

As previously mentioned, this case was also the **object of an independent parallel investigation by the National Mechanism**, which was hampered by the deficient provision of evidence by ELAS.

The Ombudsman will monitor whether the Administration responds substantially to the above four cases within 2021, in addition to the information that has been received that the cases are being evaluated. In this phase, the Ombudsman has pointed out the need for compliance with the strict deadlines of PD 120/2008 for the PDE, during the re-examination stage by the police hierarchy,⁵¹ and has requested to be specifically updated about the relevant mandates in the above cases.

50 Namely the implementation of the Plenary SC 1/2017 and the collection and use of illegally acquired evidence according to Article 177 paragraph 2 C.C.P.

51 Article 24 paragraph 6, in combination with Article 31 paragraph 5 or 38 PD 120/2008.



5. Commonly identified shortcomings of administrative investigation procedures

Commonly identified shortcomings of administrative investigation procedures

This section presents the common shortcomings that tend to appear in disciplinary investigations that were reviewed by the Independent Authority in 2020, mainly concerning ELAS. The list follows the order in which similar problems appear in the 2019 report of the National Mechanism,⁵² to facilitate the monitoring of issues over time.

5.1. As to the investigating body

The National Mechanism's standard proposal is that the administrative investigation for ill-treatment (abuse involving physical violence, racist-motivated abuse) be assigned to an officer from a Police Directorate other than the one involved in the complaint. In the disciplinary law of police personnel, this was only ensured in relation to the EDE; however, the Mechanism noted that in any event the necessary formal distance of the person conducting the internal investigation must be ensured.⁵³ This proposal by the Ombudsman was adopted in December 2019 with PD 111/2019 (Article 1 paragraph 1), including the preliminary inquiries (PDE) that constitute the bulk of the disciplinary investigations.

However, the problem continues for investigations that were pending when said PD was being published, and in its relevant findings, the Ombudsman points out the lack of necessary distancing, as a basic guarantee of impartiality, according to ECtHR case law.⁵⁴

With respect to the PDEs for 2019, the National Mechanism's finding stated that the conduct of an investigation into the abuse of alien detainees in a Pre-Departure Centre by an officer of the same Directorate does not meet the conditions of the necessary formal distance between the investigator and the investigated officers (**F. 246381**). In other PDEs, the Ombudsman observed that the investigator serves in the same Directorate and is housed in the same building with police officers who were accused of the psychological abuse of a minor (**F. 260871**), and that in essence these are his colleagues, who serve in the same Sub-Directorate or the same Directorate with him,

52 See p. 81–114.

53 See 1st EMIDIPA Report 2017 – 2018, p. 63 et seq. and the EMIDIPA Report 2019, p. 88 et seq., 131 et seq.

54 ECtHR Decision *Andersen v Greece* on 26.04.2018 paragraph 61 et al.

share the same working area and fall under the same level of hierarchy (F. 256994).

The Ombudsman expressed its satisfaction regarding the acceptance of its recommendation, prior to the publication of PD 111/2019, that is for the initial order for a PDE regarding the alleged racist treatment during an identity check of an alien in Attica to be amended and this to be assigned to an officer of a different Directorate from that of the involved officers (F. 259976). On the contrary, a mandate for the continuation of an investigation which was issued after the publication of PD 111/2019, did not take this into consideration and the administrative investigation continued within the same Directorate (F. 242556).

5.2. As to the type and scope of the investigation

Failure of formal investigation

Responding to the Ombudsman, who had requested to be informed about the administrative investigations of certain incidents that took place around the time of the anniversary of the Athens Technical University in 2019,⁵⁵ which had been brought to the attention of the authority and for which there are published data, photographic and video material, as arises from online publications that it forwarded to ELAS, in April 2020, GADA clarified that two of the incidents were not the subject of an administrative investigation and forwarded the official police reports to the Ombudsman. With respect to the “unprovoked attack with tear gas to break up the crowd that had gathered at the Evelpidon Courts on 18.11.2019”, it arises from the relevant official police report that tear gas was not used and ELAS repelled the crowds because they were attacked with bottles, etc. by masked individuals. Regarding the second case, the “alleged unprovoked attack on students at the Athens University of Economics and Business on 11.11.2019”, the competent Directorate states that DIAT repelled individuals that attempted to squat in the building; they were repelled with shields, further to orders and according to the rules of engagement and as result will not constitute the subject of further investigation from a disciplinary point of view. The Ombudsman observes that this opinion is the product of an unofficial investigation, based solely on the reports of the involved services, without examining other parties or third-party witnesses. It proposes that the preliminary investigation that is provided for in PD 120/2008 be observed for the collection of evidence in the case of public complaints regarding incidents. Other than ELAS’ uniform practice (it is common for a PDE to be ordered for reports referring to police’s discreditable actions in episodes in 2020), the broad collection of evidence and the rules governing a formal investigation prevent the Administration committing the fallacy of begging the question and leaving citizens with the impression of lacking an impartial judgement.

55 See above, chapter 4.2 regarding the investigation of incidents in November 2019.

Investigators' omissions in relation to the complaints

Overlooking an allegation of torture

Given that torture is prohibited both by the Constitution (Article 7 paragraph 2), and by the European Convention on Human Rights (Article 3) and constitutes an extremely serious incident of arbitrariness, combined with the gravest disciplinary liability according to PD 120/2008, as well as criminal turpitude (Article 137A PC.), it is imperative that allegations of torture are thoroughly investigated by the Administration.

In a PDE, following an online publication with various complaints by detainees, the Ombudsman observed that there is no mention- of the incident of abuse of a male detainee in the Police report and there is no indication in the PDE file that this case has been investigated. There is no justification for the investigation's not being conducted. The published complaint mentions the first name of the alleged victim and specifies the area of detention within the detention centre, evidence which could initiate the search for the alleged victim for a statement to be taken, if he was located, for forensic examinations to be carried out, etc. **(F. 273572)**.

Unjustified use of a firearm

In one case, the use of a firearm, according to the detailed requirements of paragraph 1 and 2 of Article 3 of Law 3169/2003, is not investigated and the investigator suffices to state that the police officers presented their firearms during a civilian check, in accordance with the relevant regulatory order **(F. 244537)**.

Failure to investigate racist motives.

Failure to investigate and document the existence or not of racist motives was observed despite the relevant order and the complaints of abuse made by a beneficiary of international protection at a police station in the centre of Athens **(F. 269978)**.

Failure to identify a perpetrator.

The necessary identification of a perpetrator of an arbitrary act constitutes a component of a thorough and effective administrative investigation, according to ECtHR case law.⁵⁶

With respect to the alleged bodily injuries, the complainant claims that for two hours the named chief of police refused to give the names of the police officers that carried out the beating, and the PDE investigator believes, without being able to support this belief, that they were never denied the right to file an application for the details the following day. In its finding, the Ombudsman concluded that failing to give the complainant

56 ECtHR Decisions *Konstantinopoulos v. Greece*, 22.11.2018, *Makaratzis v Greece*, 20.12.2004, § 74: "The investigation must be capable, firstly, of ascertaining the circumstances in which the incident took place and, secondly, of leading to the identification and punishment of those responsible. This is not an obligation of result, but of means."

immediate access to the details of the police officers that came in contact with them resulted in non-identification of the perpetrators of the alleged incident **(F. 258550)**.

The task of identifying and searching for the perpetrators of the reported ill-treatment cannot be passed onto the victim and complainant, given that the investigative duty of the investigator in the administrative inquiry is the search for the substantial truth, to the extent that the disciplinary procedure follows the principles of penal proceedings on investigation and evidence. **(F. 248287)**.

Although the complainant states that he was beaten by a total of five plain-clothed police officers of the same police department, and while being able to describe each one in detail and stating that he would be able to recognise them, the investigator does not take any action to identify them, but chooses, without any reasoning, to limit the circle of investigated police officers to only the two that conducted the interrogation on that day **(F. 257377)**.

5.3 As to the investigator's duty to search for witnesses and other necessary and appropriate evidence.

It is the investigator's duty to search for witnesses and any necessary or appropriate material (entries in books of offences and incidents, video or photographic material, etc.), since the ex-officio collection of evidence stems from the principle of searching for material truth that also applies in a disciplinary trial.

Search for witnesses

Failure to search for witnesses may also concern police officers who were present at the incident:

In a complaint concerning bodily injuries in Thessaloniki, the members of the squad at the location in question were not called to testify to exhaust the possibilities of identifying those who were involved with the complainants **(F. 258550)**. The investigator failed to search for the police officers at the police station which the complainant went to immediately after the incident to complain **(F. 251687)** or other police officers at the police station, where a complaint for sexual harassment was filed **(F. 262869)**. A traffic police officer, who was a material eyewitness, was not called to testify **(F. 251687)**.

Other officers as witnesses

In an abuse complaint during Police transfer of a prisoner, the following was noted: The prison employees who received the complainant were not sought or called as witnesses, nor were the medical personnel who examined him and referred him to the General Hospital emergency department **(F. 257377)**.

Third-party witnesses

The exhaustion of evidence that is given in statements exclusively by police officers does not guarantee impartiality in the investigations, pursuant to the relevant ECtHR case law.⁵⁷ It is observed that third-party witnesses are often omitted.

In a PDE relating to the beating of an unaccompanied minor at a police station of the Peloponnese Region, the investigator did not call the NGO escort, who picked him up from the police station to take him to the facility for minors, as a witness (**F. 269220**). In an incident at a metro station, individuals who assisted the police officer under investigation were not called to testify either (**F. 265164**). The fact that the complainant did not suggest the examination of other witnesses does not release the investigator from the obligation to take all necessary actions to seek the truth, especially because the incident took place in the city centre and at a time when there was a strong chance that witnesses – shopkeepers or residents of the area – were present (**F. 261027**). The same is true for an incident in a residential area early in the evening (**F. 244537**). The reported abuse took place outside an office that was open to the public, without the citizens that were present during the incident being called as witnesses (**F. 259978**). Eyewitnesses were not sought from nearby residences or stores where a foot chase and shooting took place, and nor were the citizens who assisted the police officer under investigation by calling the police emergency service called as witnesses (**F. 253928**).

Alien witnesses

The lack of timely examination of alien witnesses in ELAS investigations has already been referred to in another chapter of this report.⁵⁸

It is surprising, however, that the examination of alien residents of a European country is avoided. The Ombudsman fails to view the finding of the PDE report – that it is not possible to examine the complainant, since he is a permanent resident of a country of the European Union – as a legitimate reason. Pursuant to the relevant provisions of the CCP, the complainant could give a sworn statement before the relevant consular authority.⁵⁹ In any event, non-examination, in the context of the PDE, means that the investigator must consider the contents of his written complaint of racist treatment, which was forwarded via the relevant consular authority (**F. 259976**).

Detained witnesses

The examination of detainees as witnesses, and especially aliens, presents a few shortcomings – and sometimes it is omitted altogether – both in relation to the alleged victims and in relation to material witnesses. The Mechanism recalls the general principle of ECtHR case law regarding the vulnerable position of those in custody and the

57 *Emin Huseynov v Azerbaijan*, Decision 07.05.2015.

58 See chapter 3.1. Incidents against persons from vulnerable groups.

59 Article 33 Presidential Decree 120/2008, in combination with Article 216 paragraph 2 CCP.

obligation of an independent and effective investigation where there are allegations of ill-treatment by police or other State officials.⁶⁰

In a PDE where the examination of alien detainees was completely and unjustifiably overlooked by the investigator, the Ombudsman's finding states that the search for the alleged victims and material witnesses among the detainees themselves is crucial for verification of the incident. *"The procedure must be carried out in a way that gives the interested persons a real opportunity to make a statement as to how they have been treated"*⁶¹ (F. 266506).

In another case, no sworn examination of two refugees/defendants who were remanded in custody, or any effort that was made to examine them, appears in the findings report. The Ombudsman noted that with an on-demand examination they should have been asked if violence was exercised against them during the incident which is under investigation, by whom, in what manner or means, if the violence caused injuries, if there was a conflict with their fellow detainees, etc. (F. 257712).

Due to the delay of the PDE, the timely search for eye and ear witnesses was in effect cancelled, except for the police officers, given that they refer to co-detainees of the bodily injury complainant, i.e., witnesses of foreign origin under administrative custody, searching for whom is futile, given that many of these witnesses are no longer in the country. The Ombudsman pointed out that in similar situations, the ECtHR has already deemed that the time lapse inevitably reduces the quantity and quality of available evidence and that the impression of a lack of diligence causes doubts in relation to the good faith in which the investigations were conducted⁶² (F. 250007).

Lawyers as witnesses

In the case of an alleged injury of detainees at a police station, the Ombudsman notes that their lawyer could have been examined as part of the PDE and be asked when he went to the station, what he knows about the incident, if he heard anything in the holding cells during the intervention, if the detainees, with whom he conversed, had injuries, if the detainees brought up the issue of a confrontation among them and if some asked for assistance (F. 257712).

Doctors as witnesses - search for forensic and medical reports

The relevant omissions are crucial for the collection of evidence, in the case of complaints of bodily injuries, while the cause of the injuries, if necessary, must also be clarified with medical or forensic statements.

The investigator failed to search for discharge certificates, diagnoses, in-patient cer-

60 ECtHR Decisions *Salman v Turkey*, 27.06.2000, paragraph 99, and *Konstantinopoulos v Greece*, 22.11.2018, paragraph 91.

61 Relevant CPT recommendation following a visit to our country from 14 to 23 April 2015 (see CPT/Inf (2016) 4 part, <https://rm.coe.int/-14-/1680931ad4>, reasoning 40, 41, 42).

62 ECtHR Decision *Paul and Audrey Edwards v United Kingdom*, 13.04.2002.

tificates from the General Hospital which the complainant was admitted to after the incident and did not deem it expedient to examine potential witnesses regarding his condition at the time (**F. 251687**). Although the police station requested the examination by the Forensic Department the day following the apprehension of the three complainants, the findings are not included in the file and were not considered by the investigator of the PDE. (**F. 266802**). The investigator failed to call the medical and nursing staff of the General Hospital, who cared for the referred detainee and gave their opinion about his injury, as witnesses (**F. 257377**).

Search for ballistics and other reports

Although the findings of the EDE investigator refer to a shot of “safe” intimidation and the collection of a shell, it neither specifies what the safe conditions consisted of nor identifies the weapon that was fired, since it fails to request both the ballistics expert opinion, to ascertain the direction of the bullet, and the ballistics report, to prove the identity of the shell. Instead, the investigator chooses to rely solely on the written statements of the police officer under investigation regarding the number of shots and the safety of the conditions, which, as specifically mentioned, coincides with the said officer’s knowledge regarding the layout of the area (**F. 253928**).

Search for photographic and video material

The Ombudsman noted that in the context of the PDE into the injury of detainees, investigation and assessment of the possibility of maintaining a copy of the material from the video surveillance system and including it in the case file opened, as per Article 243 of the CCP, to the extent that it constitutes evidence, is an obligation for the investigating officer, in conjunction with article 239 of the Code of Criminal Procedure.⁶³ Moreover, article 95 of Presidential Decree 141/1991 provides for corresponding obligations.

In the case of a detainee reporting blows to the head, the Ombudsman observed that the PDE should seek the DEE photographs taken during forensic marking, based on the above submission report, which will show the date and time at which they were taken. Moreover, if there was a video surveillance system at the Police Department, a copy of the recordings or a document attesting their non-existence or the non-operation of the system or the retention period of the recordings should be sought (**F. 242556, F. 257712**). Moreover, in the case of the injury of a football fan during incidents outside the stadium, the Ombudsman pointed out that, to ensure the effectiveness of the investigation, it is necessary to search for any video footage and to examine whether the squads that were acting had badges on their uniforms or not, in accordance with ECtHR case law.⁶⁴ (**F. 248287**).

63 See ECtHR Decision *Milić and Nikezi v. Montenegro*, 28.04.2018, paragraphs 99-100.

64 ECtHR Decision *Hentschel and Stark v Germany* of 09.09.2017.

5.4 As to assessment of evidence

Principle of full justification

The National Mechanism notes that, according to the principle of moral proof that also applies to disciplinary proceedings, the justification “especially and thoroughly based on what means of proof and what reasoning” was established by the investigating party⁶⁵ is always needed, despite not always being observed in practice.

In a case of alleged infringement of the personal liberty of a complainant who was taken into custody from her home, the Ombudsman observed that what is clearly missing from the rationale of the supplementary report of the finding of the PDE conducted is the documentation, i.e. the specific reasoning on the allegations and evidence, testimonies or other documentation, that led the investigator to believe that there is no disciplinary liability on the part of the police officers involved with regard to the complaint of illegal infringement of the personal liberty of the complainant, as to whether or not there was illegal arrest, exceedance of in flagrante limitations, exposure of the complainant as a perpetrator of theft in the eyes of residents, and her allegation that she was threatened by the Duty Officer, etc. For all the above, there are witness statements in the transmitted folder that should be evaluated, also about documents such as the call to 911 etc. (**F. 243707**). In a case of injury to prisoners, the investigator – making a vague assumption from a relevant document at the beginning of the inquiry, before examining the evidence and pre-empting the subsequent analyses – jumped to the conclusion. Apart from the fact that this is inconsistent with the principle of full reasoning (according to which the reasoning cannot be formal, since the objective is the substantive correctness of the relevant judgments), such an approach does not meet the requirement of ECtHR case law, based on Article 3 of the ECHR, or the procedural obligation deriving from it to conduct a formal effective investigation, which must be thorough,⁶⁶ in the case of complaints of ill-treatment (**F. 257712**).

Justifying the proposed sanctions

The National Mechanism comments on the recommendation of sanctions by the investigator carrying out the PDE or EDE when it observes an obvious disproportion to the evaluation or lack of documentation for applying the relevant provisions of disciplinary law.

In a case where the PDE proposed the lowest sentence of reprimand instead of a fine, the Ombudsman notes that the PDE made only reference to the attitude of the two police officers towards their service as a disciplinable offense, without making any reference to the fact that the major issue in this case is the use of verbal and physical violence

65 By virtue of article 8 paragraph 1 of Presidential Decree 120/2008, in combination with Article 177 CCP.

66 “The authorities must make serious attempts to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions” (see ECtHR, Decision *Petropoulou-Tsakiris v Greece*, 06.12.2007, paragraph 45).

against a minor, which constitutes at least inappropriate behaviour towards citizens and undignified behaviour of a police officer on duty, is contrary to police duties and is conduct unbefitting the capacity of police officer **(F. 258546)**.

In an instance of brutal behaviour against an alien detainee, the reasoning section of the Police investigation clearly reflects the disciplinary liability of the other police officer present at the incident, who did not report it to the Duty Officer, as he should have; however, according to the investigator, there are no blatant or serious omissions and the penalty of a fine is recommended. The Ombudsman observes that, while these matters are up to the disciplinary bodies, the disciplinary penalty aims at safeguarding the public interest through the correction of offenders in service, and the concept of discipline includes, according to Article 2, paragraph 1 case e of Presidential Decree 120/2008, respect and protection of the rights provided for by the Constitution and laws. Service duty, according to Article 4, paragraph 2 of Presidential Decree 120/2008, is defined by the obligations imposed on the police officer by the provisions of the Constitution, the laws, the Regulations of the Police Force, and the conduct which the police officers must maintain on and off duty due to their capacity. One of the rules to be complied with is that in article 2, paragraphs (d) and (e) of Presidential Decree 254/2004 “Code of Conduct for the Police Officer”, which stipulates that the police officer *“respects the right to life and personal security of every individual. He/she does not bring about, provoke or tolerate acts of torture or inhuman or degrading treatment or punishment, and he/she duly reports any violation of human rights”*. Therefore, based on the above, the competent body for deciding whether or not to assign the heaviest penalty for the offence of Article 11 paragraph 1 (j) of Presidential Decree 120/2008 of the behaviour of the second police officer should judge the seriousness or not of his failure to report the behaviour of the other police officer in the discharge of duty and comply with discipline, and not on the criterion of how blatant this is (in this case, very blatant) **(F. 253608)**.

Justification of violence applied

In a Police findings report, it is ascertained that a DIAT intervention at a Police Department was deemed necessary and urgent, since order was being compromised, but it does not specify the actions involved in the intervention or the manner and means used or the degree of violence necessary to restore order, to ascertain that it was necessary and legal, to provide grounds for the above conclusion⁶⁷ **(F. 257712)**.

Evaluation of testimonies

In a PDE on abuse of a beneficiary of international protection, adequate explanations were not provided as to one of the key issues of the investigation, namely how the complainant fell on his own in front of the marble steps outside the office and then started banging his head and feet, as recorded in most police testimonies received. In

67 According to the case law of the ECtHR, recourse to physical violence against a person in detention, which has not been made strictly necessary by his conduct/reaction, reduces human dignity and is, in principle, a violation of the right set out in Article 3 of the ECHR (see *ECtHR Decision Assenov v Bulgaria*, 28.10.1998, paragraph 24).

contrast, the physical injuries found according to the forensic report are not attributed to falling and do not include findings on the head (**F. 259978**).

In a PDE into use of force against a mother and one of her two minor children, the investigator relied on the testimony of her estranged spouse regarding her psychological condition, thus shifting the subject of the investigation from the conduct of the police officer under inquiry to the investigation of the conduct of the victim, taking the claims of the estranged spouse of the complainant – with whom the complainant is in a legal dispute – at face value. At the same time, it disregards the medical opinions regarding the complainant and the children, including the expert opinion of a child psychiatrist (**F. 261397**).

Equal distance maintained by the investigator

The impartiality of the party conducting the investigation shall be expressed through maintaining equal distance and not considering a priori unreliable the version of the complainant against the version of the policemen under investigation.⁶⁸

The investigator carrying out the PDE into psychological abuse of a minor bases his findings exclusively on the identical written explanations of the policemen being investigated, and he adopts their claims, without the aid of other evidence, considering the policemen explanations as the only and well-founded proof that the allegations of the parents of the complainant are unsubstantiated (**F. 260871**). The greater number of the testimonies in favour of option A or B is not sufficient if they are not evaluated qualitatively (**F. 247701**).

Identical testimonies of witnesses

The identical testimonies should not be taken into consideration, given their obvious lack of evidentiary value (**F. 261027**, **F. 251687**). The statements of seven (7) police officers are identical, as they differ only in the personal data of the examined persons (**F. 244537**).

Failure to ask necessary questions

This is a frequent phenomenon, which renders an internal investigation by the Administration incomplete and may entail partiality in the documentation of its findings.

The police officers present at the Police Precinct were not asked if a confrontation between the prisoners took place or when and if it resulted in the injury of the two

68 ECtHR Decision of 26.04.2018, Andersen v Greece, § 61: “*Judging the applicant's version to be subjective and not that of the police officers, the authorities assigned to carry out the investigation thus applied in practice different criteria when assessing testimonies. However, the Court considers that the reliability of the statements made by the police officers also needed to be examined, all the more so given that the contested investigation aimed at establishing whether the police officers should have been the subject of disciplinary penalties*” (Zelilof v. Greece, 17060/03, § 60, 24 May 2007, and Ognyanova and Choban v Bulgaria, no. 46317/99, § 99, 23 February 2006).

refugees (**F. 257712**). In a case of illegal use of a firearm, the witnesses were not asked about the direction of the shots fired (**F. 253608**). When a football fan was injured in incidents outside the stadium, the police officers were not asked any questions about the location of the squads, their movement and reaction to the attack by the persons (**F. 248287**). The alleged victim of a police attack was not asked about any attack on other citizens, while, in contrast, non-attacking of any other citizen is included in statements made by police officers and is reiterated in the reasoning of the PDE (**F. 272727**).

Inadequate assessment of medical findings

Neither the contusions nor the forensic medical assessment of the injuries possibly caused by the handcuffs were evaluated, nor were the injuries caused by a blunt object evaluated. If the accusations regarding only certain blows are confirmed, their legality must nevertheless be investigated (**F. 247701**). The investigator did not make any evaluation of the content of the certificate from the general hospital, which ascertains the existence of bruises and contusions, nor did he consider the photographs submitted by the complainant (**F. 261027**). A specific evaluation of the findings of the medical forensic report is required regarding the alleged causes of the injuries (**F. 257712**).

The PDE relied on summary medical examinations, in the presence of other persons and a police officer, by a doctor of the Detention Centre, in a case of a detainee's complaint of beatings. The Ombudsman observes that in this case it does not appear that the guarantees of an effective investigation into ill-treatment, consisting of a timely and appropriate medical examination, were complied with, in accordance with the case law of the ECtHR.⁶⁹ (**F. 250007**).

The investigator carrying out a PDE into psychological abuse of a minor uses unsound arguments to reject the medical opinions submitted, while omitting to request, within the framework of carrying out a disciplinary inquiry, a psychiatric expert opinion on the complainant, in view of the doubts he expresses; to examine the child psychiatrist as a witness; or to investigate whether the complainant received any type of psychiatric or psychological treatment or other support (**F. 260871**).

Review of photographic and video material

The study of the material by a person not carrying out the administrative inquiry cannot substitute for the needs of and any questions that may arise for the party carrying out the investigation. Consequently, the video recording reflecting the entire incident and the movements that took place must be secured and sent to the person carrying out the administrative inquiry for examination, use and evaluation, in the framework of his/her investigative duty (**F. 253608**). Although it was requested, in the context of the preliminary inquiry carried out, that a copy be provided from the closed-circuit recording in the station, the investigator did not consider the relevant evidence (**F. 266802**).

69 See ECtHR Decision *Mehmet Emin Yuksel v Turkey* 20.07.2004, ECtHR Decision *Musa Yilmaz v Turkey* 30.11.2010, ECtHR Decision *Davitidze v Russia* 30.05.2013.

Targeting of the complainant with accusations of disobedience or resistance

The phenomenon of the targeting of whoever reacts to police checks by opening a criminal case file against said complainant for resistance and disobedience has raised concerns for the National Mechanism in its previous report as well.⁷⁰ These are disputes that often result in lawsuits on both sides, and in the corresponding disciplinary procedure there are irregularities indicative of the misuse of the capacity of the police officer against the ordinary citizen, with abusive use of the means of criminal law.

A foreign citizen alleges ill-treatment and beating by police officers when he imitates the sound of the patrol siren passing next to him in the centre of Athens, while being arrested for resistance and disobedience. The medical forensic report has findings that are consistent with the alleged beating he suffered; however, the person carrying out the administrative inquiry has doubts, based on the conflicting testimonies of police officers and eyewitness accounts of private citizens (**F. 256278**).



70 See 2019 Report, pp. 112–114.

5.5 As to the investigation procedure

Delays

Presidential Decree 111/2019⁷¹ sets the deadline for completion of PDE and, in exceptional cases, a reasoned decision extending the deadline for completion of the PDE, at 2 and 1 month(s), respectively.

The effort to shorten the duration of this most common administrative inquiry has not yet produced results within 2020, given that inquiries ordered one or two years before publication of said decree were forwarded to EMIDIPA.⁷² Moreover, the effectiveness of the regulation will be determined by the total completion time of the PDE, which passes through the stages of the police hierarchy.⁷³

The Ombudsman pointed out the excessive delay on the part of the Hellenic Police, which forwarded a PDE file eight (8) months after its completion for the statutory audit of its completeness by the Independent Authority (**F. 259976**). The Ombudsman, in its 2020 finding on a PDE which came to it 9 months after the date on which the inquiry was ordered, observed that the disciplinary case file does not contain a decision extending the initial two-month deadline, due to exceptional reasons, in accordance with the above Presidential Decree. The Ombudsman noted that the provision of article 23(1) of Presidential Decree 120/2008 prioritises the examination of disciplinary offences allegedly committed by police officers against citizens over the examination of other disciplinary offences, and the provision of paragraph 4 of Article 1 of Law 3938/2011, as replaced and in force, requires priority examination of disciplinary cases that are monitored by the Ombudsman (**F. 265520**).

The Ombudsman reiterates its firm recommendation that the disciplinary inquiry procedures be expedited, because the delay in the internal investigations creates a sense of concealment and impunity.

Infringement of the obligation to suspend a decision until the Ombudsman's report of findings is issued.

According to Article 1 paragraph 4 of Law 3938/2011, as in force:⁷⁴ *“the competent disciplinary bodies shall suspend their decision until the Ombudsman issues its report of findings”*. The breach of this obligation, in certain cases, has been the subject of recommendations by the National Mechanism, because it essentially nullifies the purpose of the law on investigation of arbitrary incidents by the Independent Authority.

71 Article 24 paragraph 6 of Presidential Decree 120/2008, as amended by article 1 paragraph 2 of Presidential Decree 111/2019.

72 A' 216/31.12.2019.

73 See article 31 paragraphs 5 and 38 of PD 120/2008, as well as relevant comments in the EM-IDIPA Special Report 2019, p. 134-135.

74 Article 56 of Law 4443/2016 and subsequently Article 188 of Law 4662/2020.

Non-compliance with the legislative provision on the suspension of a decision and the forwarding of a case already completed, in this case, render the relevant decision of the competent GEPAD voidable as to closing the case due to non-compliance with a material type of procedure, by bypassing the EMIDIPA. This breach of the law is not nullified by the ex-post forwarding of the PDE findings report to the National Mechanism. **(F. 277107)**.

Infringement of this provision shall not be remedied by invoking any internal circular of the Hellenic Police, which is not binding on the Independent Authority and does not prevail over the provisions of formal law. The issuing of a disciplinary decision without a prior report by the Ombudsman concerning an incident falling under paragraph 1 of Article 1 Law 3938/2011, is not only inadequate due to non-compliance with a material term of procedure, but also invalidates the legislator's purpose, which is to have an external and independent mechanism, parallel to the disciplinary bodies, for investigating arbitrary incidents, in accordance with the explanatory statements of the relevant draft laws. The establishment and further strengthening of the National Mechanism for the Investigation of Arbitrary Incidents was, moreover, proposed by the bodies of the Council of Europe, to ensure the necessary transparency and accountability in the action of, among others, the Hellenic Police. We therefore consider it crucial that the conclusion of the National Mechanism is not circumvented, because it constitutes an institutional guarantee of the process and enhances the credibility of the administrative inquiries **(F. 246381)**.

Independence of the disciplinary trial from criminal proceedings

Following a proposal of the Ombudsman, in December 2019 an explicit rule was laid down in the disciplinary law of the Hellenic Police regarding the potential for exceptional⁷⁵ suspension of the disciplinary procedure for one year in a case where a summons had been served in accordance with the Code of Criminal Procedure. In the rule of article 48 of Presidential Decree 120/2008 on the independence of disciplinary proceedings from criminal proceedings, there is no longer any room for doubt about the interpretation that the suspension of disciplinary proceedings cannot take place through the mere pre-trial stage of proceedings, but it entails pending proceedings in the criminal trial. The rule of the independence of disciplinary proceedings from criminal proceedings was not always respected in procedures that had commenced before the issue of Presidential Decree 111/2019, and during 2020, as well, the National Mechanism observed some problematic points in its implementation by disciplinary bodies.

In this context, the Ombudsman noted four successive extensions of the PDE deadline, due to waiting for the completion of the criminal case file, which is not a lawful reason for extension, given the independence of the disciplinary proceedings **(F. 247701)**.

Moreover, it is not always understood that the Prosecutor's act of placing a criminal

75 If the disciplinary bodies deem it "necessary", see article 1 paragraph 3 of Presidential Decree 111/2019, A' 216, 31.12.2019 and the relevant proposal of the Ombudsman in the EMIDIPA Special Report or the years 2017-2018, pp. 64– 65.

complaint in the file does not produce *res judicata* and is not binding on the party carrying out PDE, given that, regarding the existence or non-existence of facts establishing the objective existence of a disciplinary offence, article 48 paragraph 2 of Presidential Decree 120/2008 refers to an irrevocable acquittal decision of a criminal court or irrevocable acquittal decree (**F. 242556**). Disciplinary bodies are not required, according to the express provision of paragraph 2 of Article 48 of Presidential Decree 120/2008, to adopt the court ruling concerning the disciplinary violations attributed to the accused, on the sole ground that the accused has been or will be tried by the criminal court. The independence of their judgment is based on the different conditions set by the regulations of disciplinary law, which are exclusively aimed at ensuring internal discipline⁷⁶ (**F. 277377**).

Regarding the events that took place in the centre of Athens, as well as in other cities, at protests in memory of Alexandros Grigoropoulos on 6 December 2019, in October 2020, the Authority was informed that the disciplinary investigation has been *de facto* «suspended» due to the formation of a criminal case file and the conduct of a preliminary investigation in the framework of the criminal proceedings. The Authority noted to the Hellenic Police that the disciplinary proceedings are independent from the criminal or other proceedings, and the possibility of suspending disciplinary review due to parallel criminal proceedings for the same case is described in Article 48 of Presidential Decree 120/2008 as an option that must be applied exceptionally, and under strict conditions. The Authority expressed its serious reservations about the legality of the inaction of disciplinary bodies, regarding which the formation of a criminal case file is vaguely cited as the sole reason.⁷⁷

Failure to file a complaint or date of filing a complaint.

The rejection of the allegations of the complainant because he/she had the right to file a criminal complaint but did not exercise this right is not a legal justification in a PDE. This reasoning overlooks the independence of disciplinary proceedings from criminal proceedings (Article 48 of Presidential Decree 120/2008) and the fact that disciplinary offences are not limited to corresponding criminal offences (Articles 10-14 of Presidential Decree 120/2008). And, mainly, it overlooks the citizen's right to petition, to which, pursuant to article 10 of the Constitution, every public authority is obligated to provide a justified response. Citizens' complaints, according to article 23 of Presidential Decree 120/2008, constitute an exercise of this constitutional right, and the non-filing of a criminal complaint for the initiation of criminal proceedings cannot be used against them (**F. 270702**).

⁷⁶ CoS Plenary 4662/2012.

⁷⁷ See chapter 4.2. above.



6. Execution of ECtHR decisions

Execution of ECtHR decisions

— **Under a special provision, in the context of the National Mechanism for the Investigation of Arbitrary Incidents,**⁷⁸ the Ombudsman becomes a mechanism for the enforcement of decisions of the European Court of Human Rights (ECtHR), identifying shortcomings in disciplinary proceedings or new evidence that was not assessed in the disciplinary investigation. Within this framework, the Ombudsman decides on whether the competent disciplinary bodies shall review a case to exercise or supplement the disciplinary proceedings and to impose the appropriate disciplinary penalty, regardless of the initial hearing of the case. These are individual measures of compliance in the specific field only – that of disciplinary investigation of the specific behaviour judged by the Court – while any general measures of compliance with the ECtHR decision fall under the decisive competence of the Government.

In the cases of new information or evidence revealed subsequently, as well as in the case where there was a material defect in the disciplinary proceedings, the principle of non-prosecution for a second time for the same disciplinary misconduct (*ne bis in idem*) is bent, as specified in Article 188 of Law 4662/2020, in accordance with Article 4 of the 7th protocol to the European Convention on Human Rights (ECHR), which Greece has ratified. In this provision, the legislator also accepted the Ombudsman's proposal to expressly provide for the Administration's commitment to the legal characterisation of the act under investigation as held by the ECtHR, for reasons of uniform application of case law in the legal order.⁷⁹

It should be noted that, in the case of enforcement of ECtHR decisions, the Ombudsman cannot act of its own accord, unlike in cases of complaints regarding cases of arbitrariness of the same law. To enable the Ombudsman to decide on the resumption of disciplinary proceedings, Personnel Directorates of the respective public authorities must forward the judgment of the ECtHR and the relevant disciplinary file to the Ombudsman, highlighting the specific suspension periods of the statute of limitations. The law stipulates that the statute of limitations shall be suspended from the date on which the decision of the competent disciplinary body is issued until the date on which the relevant decision of the ECtHR is received by the Ombudsman.

78 Paragraphs 5-6 of article 1 of Law 3938/2011, as replaced by Article 56 of Law 4443/2016 and then by Article 188 of Law 4662/2020 (A' 27/ 07/02/2020).

79 For the Ombudsman's proposals based on the implementation of the relevant provision of Law 4443/2016 on the *Zontul v Greece* decisions and all the Makaratzis Group decisions, see the EMIDIPA special report for the years 2017-2018, pp. 46 et seq. and for the *Sarwari et al. v. Greece* decision, see the EMIDIPA special report for 2019 pp. 122 et seq.

During 2020, one (1) ECtHR decision, the *Konstantinopoulos and Others v. Greece* decision of 22.11.2018, was forwarded to the National Mechanism (appeals No. 29543/15, 30984/15). The case concerned the mistreatment of detainees at the Grevena Penitentiary Facility by police of a special anti-terrorist unit (EKAM) during a surprise inspection of their cells on 13.04.2013. In their complaint, they alleged that EKAM officers had made excessive use of tasers, had struck them, and verbally abused them and had forced them to crawl on their hands and knees to the prison sports hall, strip naked and stand facing the wall for some time. The preliminary administrative inquiry carried by the police chief found lack of disciplinary responsibility of any police officer involved, and subsequently the prosecutor dropped the criminal case.

The ECtHR ruled that there was a violation of Article 3 of the ECHR (prohibition of torture and inhuman or degrading treatment), both in the substantive part and in the procedural part, for 11 of those cited. Specifically, the Court found that the injuries to 11 prisoners took place during the inspection of their cells, and that the injuries were of the level of severity that falls under the ill-treatment – not torture – and inhuman and degrading treatment of Article 3 of the ECHR.

The ECtHR reached that conclusion on the merits, observing that this was not a rebellion repression, but an inspection scheduled by the authorities. Therefore, a corresponding risk analysis should exist for the necessary use of force, more so for an inspection that was carried out by unlocking cells one by one, which would not justify the use of a taser to deal with any violent reaction from the inmates. The forensic report found marks that could have been caused by tasers. Moreover, in the testimony of a police officer during the disciplinary investigation, the testifying officer admitted that a taser was used to deal with the aggressiveness of the prisoners, who threw objects and kicked over tables.

In terms of procedure, the Court noted failings on the part of the Greek authorities during the investigation into the allegations of ill-treatment, considering that the latter had not been thorough, prompt, or independent. First, the prison doctor who examined the complainants was himself a prisoner. While he identified bruises and marks on their skin, he was unable to explain their origin. Moreover, the disciplinary investigation officer and the Prosecutor did not intensify their investigation, capitalising on contradictory testimony regarding the use of taser. The lawyers of the prisoners were not provided with the audio and video recording of the prison on the day of the search. There was no thorough or prompt investigation: some twenty months had elapsed between the time of the applicants' complaint and the authorities' decision to discontinue the case. The Court also considered that there had been no independent inquiry into the allegations of ill-treatment: the inquiry had been assigned to a prosecutor attached to Grevena Criminal Court, even though the prosecutors of that court were also the prosecutors responsible for supervising Grevena Prison, one of whom had, furthermore, been present during the cell search of 13 April 2013.

The Ombudsman was initially notified of this ECtHR decision by the LCS, followed, in accordance with the law, by the forwarding of the ECtHR decision and the file of the relevant administrative investigation by the ELAS Personnel Directorate. The Ombuds-

man, in the context of the competence of the National Mechanism to decide on the review of the disciplinary procedure, observed the following:

1. In this case, it arises that on 15.03.2014 the Prosecutor requested the conduct of a sworn administrative investigation by the Western Greece Police Directorate, and on 28.08.2014 a senior police officer was appointed to conduct it and check the grounds of the complaints. In his report of 8.10.2014, the investigator concluded that none of the police officers who participated in the investigation had committed a disciplinary offence, and recommended that the case be closed, because the detainees' complaints were false, unfounded, and exaggerated, and aimed at halting the constant inspections that were carried out at the Penitentiary and at continuing the circulation of makeshift knives, narcotics, and mobile phones. On 17.10.2014, in a relevant decision, the Regional Police Director General of Western Macedonia closed the case, judging that the police officers had not committed a disciplinary offence, and informed the Prosecutor of the Grevena Criminal Court in this regard.

2. The ECtHR decision on infringement of the procedural limb of Article 3 of the ECHR, and regarding the administrative inquiry, in paragraph 97 points out that the investigating officer's report *"while establishing the use of the 'tasers' and referring several times to the conclusions of the medical examiner, who, after examining the applicants, claimed that he was unable to determine the cause of the injuries. It merely repeated the statements of certain police officers involved in the incident and described the conditions under which the investigation was conducted"*. Moreover, it is noted in paragraph 99 that the EDE investigator, like the Criminal Court Prosecutor, did not proceed with the investigation in depth, despite being *"faced with contradictory statements: on the one hand, those of the prison manager who claimed that neither he, the prosecutor present, the Director of the Grevena Police, nor the other police officers present had observed the use of this device; on the other hand, the statements of certain police officers who confirmed that they had made limited use of the 'tasers' for approximately two seconds"* and concluding that, due to non-satisfaction of the request of the representatives of the applicants to receive a copy of the cassette containing audio-visual recordings from the day of the inspection *"the applicants' right to effective participation in the investigation was not ensured"*.

3. To arrive at the conclusion of the violation of the substantive limb of Article 3 of the ECHR, the ECtHR ruled, based on the forensic report and, according to that report, the injuries suffered by 11 applicants, that these attained the requisite threshold of severity to fall foul of Article 3 (paragraph 81) and that the applicants had sustained ill-treatment and not been tortured (paragraph 82). It also refers to its settled case-law on this matter that: *"the ill-treatment must achieve a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of treatment, its physical and mental effects and, in some cases, gender, age and health status of the victim. Regarding a person deprived of liberty, recourse to physical violence that has not been rendered absolutely*

*necessary by his conduct reduces human dignity and is in principle a violation of the right set out in Article 3”.*⁸⁰

4. The Ombudsman, as a National Mechanism, pointed out in its findings to the Hellenic Police that the disciplinary case has not been statute-barred in this case. From the combination of paragraphs 5 – 6 of Article 1 of Law 3938/2011 it arises that lifting of the suspension of the statute bar requires that the decision be sent to the Independent Authority; however, the obligation to send is established for the Personnel Directorates of the service from which the personnel under investigation originates, so that they can also send the disciplinary file of the case, as without the relevant disciplinary file it cannot be decided to reinvestigate or dismiss the case. Consequently, the suspension of the statute-barring ceased on 03.04.2020, when the relevant disciplinary file, sent by the staff of the competent personnel department, was received by the Independent Authority.

5. Moreover, as regards the act under investigation, the law (*Article 1 paragraph 6 subparagraph 1 of Law 3938/2011, as replaced by Article 188 of Law 4662/2020*) provides that the Ombudsman must notify his decision on the reinvestigation of the case, with all the evidence in the file, to the competent service “*which is bound by the above decision and orders a new investigation, in accordance with everything accepted by the European Court of Human Rights and with regard to the legal characterisation of the act under investigation*”. Consequently, the legal characterisation of ECtHR is binding for the service’s investigation.

Given that, according to the above decision, the injuries that, according to the medical forensic report, were sustained by 11 applicants attain the requisite threshold of severity to fall under Article 3 of the ECHR (paragraph 81) and that the applicants sustained not torture, but ill-treatment according to this article, the legal characterisation of the act cannot be overlooked, and it cannot be considered a disciplinary offence that carries the lowest disciplinary penalty. The characterisation of the act by the ECtHR, especially in the absence of a national court decision on infringement of a provision of the Criminal Code regarding the brutality the ECtHR decision recognised the applicants as having sustained, should be considered when interpreting the provisions of Presidential Decree 120/2008. In these provisions, in addition to the infringement of Article 10, paragraph 1 c (for acts of Article 137^A of the Penal Code) and those of Articles 10, paragraph 1 case h, and 11 paragraph 1 case g (for attempted or committed felony or misdemeanour with a penalty incurred of at least three months), the legal characterisation of ill-treatment which does not constitute torture with a

80 See *LABITA v Italy* of 06.04.2020, application number 26772/1995, paragraph 120. In this particular decision, despite noting that the applicant did not provide any evidence for the ill-treatment, which he complains he suffered, he nevertheless acknowledged that: “*it may prove difficult for prisoners to obtain evidence of ill-treatment*” (paragraph 125).

reference to the provisions of Presidential Decree 120/2008 does not appear to be classifiable under any other disciplinary offence, apart from that of article 11, paragraph 1 case k of Presidential Decree 120/2008, where it is defined as “cruel conduct towards persons of equal rank, subordinates or citizens, provided that it does not fall under case c of paragraph 1 of article 10”. There is no question that the disciplinary body is competent for this interpretation, but the legal characterisation of the ECtHR regarding bodily damage cannot be overlooked (on the contrary, it is binding under our national legislation) and it is not acceptable to include it among disciplinary offences carrying the lowest sentence and regarding which the Personnel Directorate highlights the risk of statute-barring in its cover letter. In fact, such an assumption regarding disciplinary offences with a lower penalty could be considered begging the question. Nor must we overlook the independence of the demerit of the disciplinary misconduct, as it appears to be recognised, as well, in article 3 paragraph 5 of Presidential Decree 120/2008, or the above special legislative provision for the binding effect of the legal characterisation of the act by the ECtHR.

6. Following the above observations, **the Ombudsman decided to re-investigate the disciplinary case**, and reserving its competence for investigation and the formulation of a report, it requested that the Hellenic Police order a new administrative inquiry, which will consider the shortcomings of the disciplinary procedure outlined in paragraphs 97 and 99, in combination with those of paragraphs 77 and 79 of the ECtHR decision *Konstantinopoulos and Others vs. Greece*.



7. Legislative proposals and developments

Legislative proposals and developments

7.1. Amendment of the legislation on the National Mechanism

— **The amendment of the legislation on the National Mechanism⁸¹ in article 188** of Law 4662/2020 (A 27/07.02.2020, see annex I of the present report) is aimed at enhancing the Mechanism's effectiveness, as the Ombudsman had already proposed in 2018.⁸² The nature of the competence does not change, given that the Ombudsman continues, as in Law 4443/2016, to constitute a parallel, external investigation and control mechanism, without displacing the disciplinary jurisdiction of Administration. Those involved in cases of arbitrariness shall continue to be subject to the competent disciplinary bodies of each agency (ELAS, LS–ELAKT, Ministry of Justice).

The central point of the 2020 legislative change concerns the institutional tools of the Ombudsman that will allow it to conduct an independent investigation without falling short of the procedure and the means of evidence before the disciplinary bodies. The Ombudsman is now equipped with the express capability of summoning witnesses, carrying out inspections, ordering an expert report, and receiving sworn testimonies of witnesses and written or oral explanations from the involved persons.⁸³

The same purpose is served by access to investigative material, for the completeness of the Ombudsman's investigation, which self-evidently, as a waiver of confidentiality, is subject to the condition of use exclusively for the fulfilment of the mission of the National Mechanism for Investigation of Arbitrary Incidents. Likewise, the possibility of an investigation in parallel with any criminal proceedings is established (Article 188 para.2), for the Ombudsman not to have less powers than the disciplinary bodies of the Administration, for which the continuation of disciplinary proceedings is established as a rule, according to the fundamental principle of the independence

81 Article 56 of Law 4443/2016, A' 232, which entered into force on 09.06.2017.

82 See the first special report of the National Mechanism for the Investigation of Arbitrary Events, for the period 09.06.2017 – 31.12.2018, pp. 85 et seq. <https://www.synigoros.gr/?i=human-rights.el.files.585783>.

83 Without prejudice to the competences of other bodies, in the context of preliminary proceedings according to the CCP (see powers of special investigation officers, according to articles 34, 183 and 251 of the Hellenic Code of Criminal Procedure).

of disciplinary proceedings from criminal proceedings and the different purposes they perform in the legal order.⁸⁴

An arrangement is also introduced that if the Ombudsman ascertains an unjustified deviation from its report of findings, it may forward the investigation file to the Minister concerned for any exercise of his disciplinary authority over the officers in question (see relevant chapter above).

The grounds for discrimination are supplemented in the conduct audited by the National Mechanism, to harmonise with the concept of discrimination in general legislation.⁸⁵ The new law also clarifies the concept of the act under investigation, which in disciplinary law concerns unlawful and culpable acts or omissions,⁸⁶ to remove any interpretative doubts.

In order to strengthen compliance with the rulings of the European Court of Human Rights, it is proposed the Administration to be bound by the legal characterisation of the misconduct given by the ECtHR, in order to ensure unity in the application of case-law in the legal order, since this need has been identified in the past by judgments of the ECtHR raised before the National Investigation Mechanism, as was the case in *Zontul vs Greece*.⁸⁷ Moreover, for systematic reasons, the cases in which “ne bis in idem” is being bent, (new evidence or evidence revealed ex post or existence of a substantial defect in the procedure), are added to the text in accordance with Article 4 of the 7th Protocol of the European Convention on Human Rights as ratified by Greece.

The staffing of the National Mechanism with the necessary scientific personnel, to be able to meet the increased requirements of this competence, is a basic prerequisite for the full implementation of the regulations of article 188 of Law 4662/2020. In December 2020, the above legislative initiative was supplemented, with provision for necessary staffing of the National Mechanism, by article 28 of Law 4760/2020 (A 247/11.12.2020 (see annex II)). With this provision, the two ELAS legal experts with special duties already serving – and who, following a call for positions of senior

84 The principle of the independence of disciplinary proceedings from the criminal proceedings guaranteed by the above provisions of the relevant disciplinary law of each body, the need for at least equal institutional means for the individual disciplinary bodies concerned and the National Mechanism as an external, parallel body for the investigation of incidents that constitute disciplinary misconduct irrespective of their criminal treatment, seems to have been overlooked by the Service of Experts of the Parliament, which, in a report on Law 4662/2020, sounded the alarm of unconstitutional provisions, inter alia, in regards to these two legislative arrangements, from a perspective of Articles 96 and 26 of the Constitution, misconceiving the above as competence to ‘investigate crimes’. <https://www.hellenicparliament.gr/UserFiles/7b24652e-78eb-4807-9d68-e9a5d4576eff/e-diahkris-epist.pdf>

85 See the first part of Law 4443/2016 (Article 2), which incorporates the relevant EU Directives for implementing the principle of equal treatment. The supplement concerns cases of discrimination based on other beliefs, chronic illness, age, family or social situation.

86 See Article 4(1) PD 120/2008, Disciplinary Law of Police Personnel, A’ 182, Article 106 of the Code on the Status of Civil Servants, Article 38(11) of Law 4504/2017, A’ 184, regarding the officers of the Coast Guard.

87 See special EMIDIPA report for 2017 – 2018, pp. 46-48, 89.

investigators and a ruling of the special committee of the Authority's Statutory Law, were seconded three years ago to exercise this new competence – are transferred to the special scientific staff of the Authority. Furthermore, this transfer enhances the functional independence of these trained staff members serving at the Ombudsman. At the same time, the same article provides for the establishment of five (5) new positions of specialised scientific personnel of the Authority, the filling of which positions depends on the programming of the public sector and the relevant credit that will be made available to the Independent Authority. However, given that, due to the selection procedure followed and the broader planning in the public sector, the filling of the posts that had been provided for when the Authority was conferred the power to investigate incidents of arbitrariness in 2016 lasted four (4) years, and was only completed at the end of 2020, it becomes necessary to align the existing legislation for the Authority with the standards and recommendations of the Council of Europe on establishing the procedure for selection of staff by the Authority itself.

In light of the above observation, it is pointed out that further enhancement of the effective operation of the Authority's Mechanism, with the simultaneous shielding of its independence and impartial judgement, presupposes the establishment of a number of organisational and functional regulations for the Ombudsman, in harmonisation with the "Venice principles": the set of 25 standards for the Ombudsman institution elaborated by the Venice Commission and unanimously approved by the Committee of Ministers of the Council of Europe. The proposed changes to the institutional framework of the Ombudsman have been submitted to the Greek governments since 2018.

7.2. Proposals of the National Mechanism regarding the most effective investigation of arbitrary incidents

The experience of the Independent Authority from the investigation of cases of arbitrariness, three years after the start of the operation of the National Mechanism, highlights some persistent problems that do not facilitate effective investigation into the internal procedures of ELAS, which is the source of most of the relevant cases. Apart from the problems that can be resolved in practice by those ordering and conducting the administrative enquiries (see above, chapter 5), there are horizontal binding solutions to certain issues. To increase the effectiveness of the relevant inquiries for both the National Mechanism and the disciplinary Administration, the Ombudsman makes the following proposals **for the exercise of a regulatory initiative** by the competent bodies:

1. Obtaining and preserving video material from detention facilities

This issue has also been raised in previous EMIDIPA reports, but with no response.⁸⁸ Given the objective nature of the relevant evidentiary means, it is crucial evidence for ascertaining the events alleged by the complainants, which are often rejected due to conflicting police testimonies and/or doubts in internal administrative inquiries. In these cases, the National Mechanism recalls the settled case law of the ECtHR that, when someone is detained, under restraint or in general within the sphere of responsibility of the police, the burden of proof is reversed in the event of signs of injury and violence against the complainant, and the authority in power must prove the causes of the injury and the reasonable measure of the violence used.⁸⁹ The National Mechanism reiterates its proposal to **install cameras and record video material in all police detention areas** (Detention centres, police holding cells), at a camera angle that ensures the privacy of the detainees (coverage of corridors, common areas and entrance to detention wards), as well as to **retain the relevant video recordings for three months** from the date of recording, and in the case of a complaint about violence, until completion of the disciplinary inquiry. The same measure must apply in LS-ELAKT detention facilities.

2. Reporting in the EDE finding of the evidence on which the judgment of the disciplinary body is founded

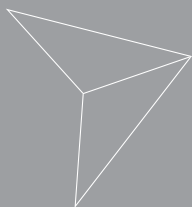
In many cases it has been observed that the report of the finding of the administrative examination does not make detailed reference to the evidence utilised by the investigator, based on which it was determined whether the incidents being investigated occurred or not. Attaching the list of evidence collected is of course very useful for ascertaining the completeness of the investigation, but it is not clear in most cases whether all of this was utilised by the investigating body when formulating its judgment. Despite the fact that, according to article 20 paragraph 2 of Presidential Decree 120/2008, failure to mention one or more pieces of evidence that must be included in the finding that completes an administrative inquiry, such as the evidentiary means, does not entail invalidity in principle, the Ombudsman considers that mention of the evidentiary means is necessary for the completeness of the investigation, as well as the reasoning of the decision, without it being necessary to make a more specific reference to which means of evidence corresponds to each conclusion in the findings (**F. 253613**).

88 See EMIDIPA reports for the years 2017-2018, p. 68, and 2019, p. 137.

89 *"Where an individual is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation as to the causing of the injury, failing which a clear issue arises under Article 3 of the Convention"*. See ECtHR decisions *Aksoy v Turkey*, 18.12.1996, *Bekos and Koutropoulos v Greece*, 13.12.2005, and *Zelilof v Greece*, 24.05.2007).

Given the similar application in the disciplinary procedure of principles and the practices of criminal justice, the settled case-law of the Supreme Court could be used here, about the concept of specific and thorough reasoning, the existence of which requires that it be shown that all the evidence were considered in forming a conclusion, and not some of it, selectively.⁹⁰

90 See indicatively SC 659/2015.



Annex

Annex

I. Article 188 of Law 4662/2020 (Government Gazette A' 27/7.02.2020)

Amendments to the provisions of the National Mechanism for the Investigation of Arbitrary Incidents in the security forces and penitentiary facilities personnel

— Article 1 of Law 3938/2011 (A' 61) is replaced as follows:

«Article 1

1. The Ombudsman is designated as the National Mechanism for the Investigation of Arbitrary Incidents with the responsibility of collecting, recording, evaluating, investigating or further proposing disciplinary action to the competent services, with regard to complaints for actions or omissions of the personnel of the Hellenic Police, the Hellenic Coast Guard, the Fire Brigade, as well as the personnel of penitentiary facilities, which occurred during the exercise of their duties or in abuse of their official status, concerning:

- a. torture and other violations of human dignity within the meaning of 137A of the Penal Code,
- b. unlawful intentional violations of the right to life, physical integrity, health, personal freedom, and sexual freedom,
- c. use of a firearm and
- d. unlawful conduct for which there are indications that it was carried out with a racist motive or which presents an implicit element of any other kind of discrimination on grounds of race, colour, national or ethnic origin, descent, religious or other beliefs, disability or chronic disease, family or social status, sexual orientation, gender identity or characteristics.

2. Complaints must be in writing and not anonymous and submitted to the Ombudsman, in person or by proxy. The name and other identity details of the complainant may not be disclosed at the stage of the investigation, if requested by the complainant in writing. If, at the discretion of the Ombudsman, the investigation is not possible without the name being announced, the person concerned shall be notified that his complaint will be dismissed if he does not consent in writing to the announcement of his name. If the complainant has no knowledge of the Greek language, he may appear with an interpreter. If the complainant is unable to write, the complaint is made orally and

recorded by an employee of the Ombudsman and a report is drawn, in which special mention is made of the complainant's inability to write. The report is signed by the complainant and the employee of the Ombudsman who drafted it. When the complaint is anonymous, it is dismissed through an act of the Ombudsman, but any evidence that provides a basis for investigation can be used in the context of an ex-officio intervention. The Ombudsman may intervene ex officio, after receiving information with specific details about incidents described in paragraph 1 and especially those that come from media publications or broadcasts, or after the case has been referred by the competent Minister or Secretary-General.

3. The Ombudsman assesses every complaint or incident as to whether it falls within its jurisdiction under this law and decides, within ten (10) days, whether to investigate a complaint or incident, in which case it draws a relevant report within three (3) months, or to refer a complaint or an incident to be investigated by the competent services, reserving its power to investigate, or to dismiss those as unfounded or not capable of assessment. Any order to conduct administrative inquiries for incidents that fall under the competence of the National Mechanism for the Investigation of Arbitrary Incidents, according to paragraph 1 hereof, shall be forwarded directly to the Ombudsman, to decide, pursuant to the preceding subparagraph, an investigation by the Independent Authority or the monitoring of the internal investigation, reserving its power to investigate, informing the relevant service.

4. In any case of investigation of a complaint or incident by the Ombudsman, through its own investigation, referral of the case to the competent service or monitoring of the administrative inquiry, the competent disciplinary authorities suspend the issuance of their decision until a report is issued by the Ombudsman. Any administrative measures provided by the disciplinary law of each service and taken against the disciplinary investigated person are not affected. The disciplinary bodies of the Hellenic Police, the Hellenic Coast Guard, the Fire Brigade and the personnel of detention facilities are obliged to examine, as a matter of priority, any disciplinary case forwarded to them or monitored by the Ombudsman, concerning the acts of paragraph 1, to provide it with information on the investigation, when requested, as well as regarding the result of the investigation of the above cases, by sending copies of all the contents of the relevant file and by suspending the issuance of the decision. The Ombudsman, in case of referral of a case to the competent service or monitoring of an administrative inquiry, evaluates the completeness of the inquiry and may refer it for supplementation, by issuing a report within twenty (20) days. Deviations from the Ombudsman's report which has been drawn following its own investigation, referral of a case to the competent service or monitoring of an administrative inquiry, are only allowed subject to specific and thoroughly justified reasoning. At any stage of the disciplinary procedure, the Ombudsman informs the competent Minister about cases where it finds insufficiently justified deviations from its report, so that the Minister may act as disciplinary superior. After the completion and issuance of the Ombudsman's report, the disciplinary proceedings are governed by the respective disciplinary law of each service. The Ombudsman is informed of the progress of the relevant disciplinary procedure and the decisions of the disciplinary authorities.

5. The Ombudsman also deals with cases for which a judgement has been issued by the European Court of Human Rights against Greece for violating the provisions of the European Convention on Human Rights (Legislative Decree 53/1974), which has found shortcomings in the disciplinary procedure or new evidence that has not been evaluated in the disciplinary investigation or trial. In such cases, the Personnel Directorates of the competent services of the security forces and the detention facilities are obliged to forward the above decision and the relevant disciplinary file to the Ombudsman, noting the specific periods of suspension of the limitation period or its occurrence. The Ombudsman re-examines the case, taking the judgement of the European Court of Human Rights into account and decides on re-opening the investigation of the case.

6. Within the deadlines of paragraph 3 of this Article, the Ombudsman, reserving his power of investigation and issuance of a relevant report, announces its decision for the case to be re-opened, along with all the details of the file, to the competent service which is bound to the above decision and orders a new investigation, in accordance with the judgement of the European Court of Human Rights and regarding the legal characterisation of the investigated act. In the context of re-investigation of the disciplinary case, it is possible to prosecute or to supplement the prosecution and to impose the appropriate disciplinary penalty, regardless of the initial hearing of the case, provided that no employee is prosecuted for the second time and for the same offence, unless there is evidence of new or newly discovered facts or if there has been a fundamental defect in the previous proceedings. For the calculation of the limitation period provided by the disciplinary rules of the security forces and the personnel of detention facilities, the time interval between the judgement of the competent disciplinary authority, under Articles 38 and 39 of Presidential Decree 120/2008 (A 18), Article 5 of Presidential Decree 187/2004 (A 187), Article 25 par. 9 of Legislative Decree 343/1969 (A 238), Article 18 paragraphs 9 and 10 of Legislative Decree 935/1971 (A 149) and Article 122 of the Code of Civil, Servants and Employees of Public Law Legal Entities, and the reception of the decision of the European Court of Human Rights by the Ombudsman. In all other respects, the ordinary disciplinary procedure of each Service, where the investigated personnel belong, is followed. If the Ombudsman does not deem it necessary to re-examine the case, it shall notify the Personnel Directorate of each competent Service to dismiss the case.

7. Pursuant to the relevant provisions of the disciplinary law that governs the involved personnel, the Ombudsman may summon witnesses, examine persons under oath, conduct an on-site investigation and order an expert's report. Those involved are obliged to provide a testimony, as well as oral or written statements before the Ombudsman. The Ombudsman may request information from any public service or service of the wider public sector, which are obliged to disclose or send copies of documents relating to the case, unless they are classified as confidential because they relate to national defence, state security and the country's international relations. The obligation to uphold medical confidentiality is not a reason for refusing to provide the documents. The information in this paragraph is used exclusively to help fulfil the mission of the Ombudsman. In case a disciplinary case has already been established by the competent disciplinary authorities of any Service, the Ombudsman receives copies of all the contents of the relevant file. The competent investigating officers and the competent judicial or prosecution authorities shall, at the request of the Ombudsman, provide

copies of documents or reports of the criminal proceedings for cases which fall within the competence of the National Mechanism for the Investigation of Arbitrary Incidents, in implementation of this article.

8. Whoever files a complaint in accordance with the provisions of this Article is entitled to be informed of the result of his/her complaint, while access to the details of the file can be obtained by anyone under the conditions and restrictions of Article 5 of Law 2690/1999 (A 45), of Law 4624/2019 (A 137), as well as Law 3471/2006 (A 133).

9. The deadlines of this Article shall be extended accordingly to the needs of the investigation, especially when new evidence emerges or when the Ombudsman has requested information from the relevant services.

10. The competence of the Ombudsman as the National Mechanism for the Investigation of Arbitrary Incidents does not substitute the existing structures for filing and examining complaints of arbitrariness to other institutions or authorities.

11. Ten (10) job positions of Article 5 of Law 3094/2003, as amended and in force, are established in the Ombudsman's Office for the exercise of the powers of the Authority, under this Article".

— 2. Paragraph 4 of Article 3 of Law 3094/2003 (A 10), as amended and in force, is replaced as follows:

"4. The Ombudsman does not intervene in cases pending before a court or other judicial authority. When the Ombudsman acts as an institution to monitor and promote the application of the principle of equal treatment in the scope of this Law, it may intervene in cases pending before courts, judicial or prosecution authorities until the first hearing is held or until the criminal prosecution or until the competent court or the competent judicial authority has ruled on an application for temporary judicial protection. The investigation of the Ombudsman as National Mechanism for the Investigation of Arbitrary Incidents is independent of any parallel criminal trial or procedure".

II. Article 28 of Law 4760/2020 (Government Gazette A' 247/11.12.2020)

Issues that fall under the Ombudsman's competence

To exercise its powers more effectively as the National Mechanism for Investigation of Arbitrary Incidents, the Ombudsman is being strengthened with staff as follows:

1. The special duties officers of the Legal personnel category, who were selected in accordance with the procedure under the provisions of paragraphs 1 and 3 of Article 5 of Law 3094/2003 (A 10) and, upon publication of this document, exercise the duties of scientific personnel at the Independent Administrative Authority of the Om-

budsman, may be converted into permanent civil servant positions in the category of university educated (UE) Special Scientific Personnel of the aforementioned Authority. To transfer them, by derogation from any general or special provisions, a joint decision of the Ombudsman and the competent body of the Ministry of Citizen Protection is issued, without the prior opinion of the service councils, if any, and without the need for the issuing of an approving Act of the Council of Ministers 33/2006 (A 280).

This transfer shall be carried out to a vacant post in a branch of the above category, with the same employment relationship. As regards the salary and grading integration and advancement of special duties officers of the first section of paragraph 1, as permanent civil servants, the time of service in the Hellenic Police shall be considered, in accordance with paragraph 4 of article 11 of Law 4354/2015 (A 176).

After the publication of the decision on the transfer, a presidential decree ascertaining the retirement of officers due to transfer shall be issued, with proportional application of Article 51 of Presidential Decree 24/1997 (A 29). The secondment of the officers hereof shall be extended until the issue of the transfer act.

2. Five (5) positions of specialised scientific personnel are established at the Ombudsman, in accordance with article 5 of Law 3094/2003 (A 10), for the more effective exercise of the Authority's competences.

III. Rules of Operation of the EMIDIPA

F. number 10/23145/2020 (Government Gazette B' 2359/16.06.2020)

Operating Regulation of the National Mechanism for Investigation of Arbitrary Incidents

THE GREEK OMBUDSMAN

Having regard to:

1. The provisions of:

a) Law 2477/1997 “Ombudsman and Corps of Inspectors - Auditors of Public Administration“(Government Gazette, Series I, No. 59), as in force.

b) Article 8 of Law 2623/1998 “Re-compilation of the electoral rolls, organisation and exercise of the electoral rights of persons living outside the municipality in which they vote, modernisation of the electoral process and other provisions” (Government Gazette, Series I, No. 139), as supplemented and in force.

c) Law 3051/2002 “Constitutionally guaranteed independent authorities, amendment and supplementation of the public sector recruitment system and related regulations” (Government Gazette, Series I, No. 220), as in force, and in particular paragraphs 5 and 7 of its Article 2 of this law.

d) Law 3094/2003 “Ombudsman and other provisions” (Government Gazette, Series I, 10), as in force.

e) Law 3861/2010 “Enhancement of transparency through mandatory online publication of all laws and other enactments of the Government, Administration and local government Bodies “Diavgeia Programme” and other provisions (Government Gazette, Series I, No. 112), as in force.

f) Article 1 of Law 3938/2011 “Establishment of Office for the Handling of Arbitrary Incidents at the Ministry of Citizen Protection and other provisions” (Government Gazette, Series I, 61).

g) Law 4443/2016 “(I) Transposition of Directive 2000/43/EC implementing the principle of equal treatment etc.” (Government Gazette, Series I, 232) and Articles 56 to 58 on the establishment of a National Mechanism for the Investigation of Arbitrary Incidents amongst law enforcement officers and employees of detention facilities, as in force.

h) Article 188 of Law 4662/2020 “National Crisis Management and Risk Response Mechanism, restructuring of the General Secretariat for Civil Protection, upgrading of the system of voluntary civil protection, reorganisation of the Fire Department and other provisions” (Government Gazette, Series I, 27).

i) Presidential Decree 273/1999 «Operating Regulation of the Ombudsman» (Government Gazette, Series I, 229), as amended and in force.

2. The fact that this decision does not entail any expense to the state budget.

3. The service needs, we decide:

The replacement of the Operating Regulation of the National Mechanism for Investigation of Arbitrary Incidents, as follows:

Operating Regulation the Ombudsman's National Mechanism for Investigation of Arbitrary incidents (Article 1 of Law 3938/2011)

I. General

1. The National Mechanism for Investigation of Arbitrary Incidents (EMIDIPA) is a special responsibility of the Ombudsman and is exercised within the framework laid down by Article 1 of Law 3938/2011. EMIDIPA is functionally and organisationally integrated into the Ombudsman.

2. The Ombudsman shall set up a special team (“EMIDIPA team”) consisting of members of the scientific and administrative staff of the Authority.

3. For the needs of EMIDIPA, a Special Database is kept, which is an annex to the Integrated Information System, access to which is granted to the Ombudsman and the members of the EMIDIPA team.

II. Initiation of an investigation by EMIDIPA

4. EMIDIPA handles cases ex officio, following a written complaint submitted by any means (in person, by post, by fax or via email/web), following a referral by the competent Minister or Secretary General or following notification that an administrative inquiry is being carried out by the competent services.

5.a. Complaints about cases of arbitrariness shall be accepted at the Reception Office of the Ombudsman, either in person or by proxy. Complaints must be in writing and not anonymous and may be directed against unknown persons. In the event of an oral or anonymous complaint, the following shall apply.

5.b. The Public Reception Office shall provide general information on the operation of

the Mechanism, identify the complainant or its authorised representative and check the formal details of the complaint. The complainant may appear with a lawyer or interpreter. If the complainant does not speak Greek and comes without an interpreter, a member of the Ombudsman staff with adequate knowledge of the foreign language in question may act as an interpreter. If the complainant so requests in writing, a note shall be made to maintain his/her anonymity. In this case, the complainant is informed that, should it appear that the incident cannot be investigated without disclosing the details of his/her identity, he/she will be asked to withdraw the request for anonymity; otherwise, the case will be shelved. In any case, EMIDIPA may decide to examine the case ex officio.

6.a. Complaints in writing that are not anonymous shall be given a protocol number and registered with the EMIDIPA Special Database. An oral complaint that is not anonymous may exceptionally be made if the complainant states that he/she is unable to draft a document. In this case, the Special Scientist staffing the Public Reception Office shall judge whether it is necessary to summon a member of the EMIDIPA Team. The cooperation of the complainant with the latter shall take place under conditions that ensure the confidentiality of the process. The Special Scientist shall draw up the complaint and an additional report stating the reason why the complainant is unable to write his/her complaint. This report shall be signed by the complainant and the Special Scientist who drafted it, should the latter ascertain that the complainant has a full understanding of the content of the complaint and the legal consequences thereof. After the complaint is signed by the complainant, it is entered into the Database and forwarded to EMIDIPA.

6.b. Anonymous complaints, received in any manner (in person, by post, by fax or via email/web), regardless of whether they contain sufficient information for their investigation, shall be registered and forwarded to EMIDIPA, labelled as anonymous. If the anonymous complaint is submitted to the Public Reception Office in person, it is received, registered and the complainant is informed that its examination will be evaluated for any ex officio intervention.

III. - Case processing

7. Following registration in the Special Database and within a reasonable period of time, the Ombudsman evaluates the cases it receives according to the above and, if they fall under the competence of EMIDIPA, it is decided within 10 days whether they will be further processed in one of the following ways:

- i) Investigation by the Ombudsman.
- ii) forwarding to the competent disciplinary body and monitoring.
- iii) monitoring of the administrative inquiry that is under way.
- iv) dismissal.

The competent disciplinary bodies shall be notified in writing of the said EMIDIPA decision, regarding their competences according to law.

8. Own research investigation

a. EMIDIPA decides to conduct its own investigation when this is deemed necessary for the fulfilment of its mission, especially due to the gravity of the act complained of, the vulnerability of sufferers, the possibility of any systematic acts of arbitrariness, etc. In these cases, the competent disciplinary body shall be notified in writing. The competent disciplinary body shall inform EMIDIPA if the case is already under disciplinary investigation and whether administrative measures have been imposed against the party under disciplinary investigation. If a disciplinary investigation is under way, the issue of the disciplinary decision shall be suspended.

b. During the investigation, the Ombudsman may summon and examine witnesses under oath, conduct in-person and on-site inspections and order expert opinions. Employees who are summoned are obliged to provide testimony and written explanations before the Ombudsman. Refusal of an employee to appear when summoned by the Ombudsman constitutes non-cooperation with the Authority and is punishable by disciplinary action according to paragraph 10 of Article 4 of Law 3094/2003.

c. The Ombudsman may request information from public services or services of the wider public sector, which must disclose or transmit copies of documents relating to the case, unless said documents are classified as confidential because they concern national defence, state security or the country's international relations. This information is used exclusively to fulfil the EMIDIPA's purpose. In the event of a disciplinary case already drawn up by the competent disciplinary bodies of each service, EMIDIPA shall be informed of the details and the outcome of the investigation and may receive copies of the relevant file at each stage of the procedure. The competent investigating officers and the competent judicial or prosecution authorities shall, at the request of the Ombudsman, provide copies of documents or reports of the criminal proceedings for cases which fall within the competence of the National Mechanism for the Investigation of Arbitrary Incidents, in implementation of this article.

d. Before the findings are drawn up, the person against whom there appear to be clear indications of commission of a disciplinary offence shall be invited in writing to be informed of the evidence of the investigation and to present their views within a specific deadline. The party under investigation shall express his/her views orally and answer questions from members of the EMIDIPA team. The party under investigation may submit a memorandum in which questions for clarification may be asked. The party under investigation may attend this procedure with a lawyer.

e. After the party under investigation is examined or if the deadline lapses without action, the EMIDIPA shall issue a conclusion which it sends to the disciplinary superior of the party under investigation regarding its own actions under the relevant disciplinary provisions.

f. The EMIDIPA findings must specify a. the objective findings of the investigation, mainly those place the specific incident under the specific acts referred to in Article 1 of Law 3938/2011, b. the subjective evidence, i.e., the fault of the respondent party; c. the evidence collected which gives rise to the above findings.

g. If the complainant withdraws his/her complaint before the completion of the investigation, EMIDIPA considers whether there is a case for an ex officio investigation, and if not, the case is dismissed, in accordance with Article 11 of these Regulations.

9. Forwarding and monitoring

a. The complaint shall be forwarded to the competent disciplinary body with an investigation order, with special reference to the obligation of article 1, paragraph 4 of Law 3938/2011, that the case be examined as a matter of priority. Among other things, it is investigated whether the disciplinary body has already commenced a disciplinary investigation into this case.

b. EMIDIPA monitors the investigation procedure and may at each stage thereof request information and make suggestions and remarks regarding its progress.

c. Following the conclusion of the inquiry by the disciplinary body and before the decision is issued, the case file shall be sent to EMIDIPA, which shall evaluate the completeness of the investigation. If deemed expedient, the case shall be referred for supplementation within 20 days from receipt of the dossier. Non-compliance with the finding's referral is permitted only on special and detailed grounds.

10. Monitoring of the administrative inquiry that is under way.

EMIDIPA examines the administrative examination orders forwarded to it by the competent services, in accordance with Article 1, paragraph 3 subparagraph b of Law 3938/2011, to decide whether to carry out its own investigation or to monitor the internal investigation, retaining its right in the latter case to carry out its own investigation and informing the relevant department accordingly. During the inquiry, the deadlines and the procedure of Article 1, paragraph 3 subparagraph a of Law 3938/2011 and articles 8 and 9 of these Regulations are complied with.

11. Dismissal

The following shall be dismissed:

a) inadmissible complaints that are not anonymous when the actual incidents described do not constitute the acts audited EMIDIPA. In cases where the allegations can be examined in the context of the general competence of the Ombudsman, the case is referred to the competent department.

b) signed complaints deemed unfounded, when their content is incomprehensible,

completely vague, incomplete, and the complainant did not come forward to provide additional information.

c) complaints where compliance with anonymity, which has been requested by the citizen, makes it impossible to continue the investigation. In this case, the interested party shall be informed that his complaint will be dismissed should he not consent in writing to the announcement of his name.

d) all anonymous complaints, provided it is not deemed appropriate to examine them through the ex officio investigation procedure.

e) administrative inquiry orders relating to incidents where EMIDIPA has no competence.

f) Signed complaints that have been withdrawn, under the conditions of Article 10e of these Regulations.

In cases a, b, c above, the complainant shall be notified in writing.

IV. - Completion of procedure

12. The disciplinary body shall send to EMIDIPA its decision, concluding the Mechanism's procedure.

In cases where the Mechanism is conducting its own investigation, intervention by EMIDIPA is concluded when the decision of the disciplinary body is in line with the findings of EMIDIPA or deviates with justification, without EMIDIPA having referred the decision due to insufficient grounds.

If EMIDIPA considers that the decision of the disciplinary body deviates from the operative part of its conclusion on insufficient grounds, it informs the competent Minister so that he/she may take the actions provided for by law as a disciplinary superior.

After the end of the procedure, EMIDIPA notifies the complainant of the relevant findings, and, in addition, following a written request, of those elements of the dossier for which there is no obstacle of access under the terms of Laws 2472/1997, 2690/1999 and 3471/2006 or other special provisions. If the investigation is carried out by reference to the competent Minister or Secretary General, he is informed and sent the relevant findings.

13. If, after the end of the EMIDIPA audit, or after the notification of the audit by the competent disciplinary body, sufficient indications of guilt arise for the offences included in Article 1 of Law 3938/2001, as replaced by Article 188 of Law 4662/2020, the case is referred to the Prosecutor under the terms of Article 5, paragraph 8d of Law 3094/2003.

V. ECtHR rulings

14. The Ombudsman undertakes cases in which a judgment has been handed down by the European Court of Human Rights (ECtHR) against Greece for breach of the provisions of the European Convention on Human Rights and in which it identifies shortcomings in disciplinary proceedings or new elements which were not assessed in the disciplinary investigation or the adjudication of cases concerning the acts of article 1, paragraph 1 of Law 3938/2011. The decisions shall be forwarded to EMIDIPA by the Personnel Directorates of the competent services (Security Corps and Detention Centres) and registered in the Database, which ensures they can be monitored. Registration in the Database shall include mention of the precise date on which the act becomes statute-barred, considering the specific suspension periods and any occurrence of statute-barring, as noted in the relevant forwarding document.

15. Within ten days of receipt of the ECtHR decision, EMIDIPA shall decide:

a) if there is no need to reinvestigate the case, in which case it shall communicate its findings to the Personnel Directorate of the competent service, to have the case archived.

b) if it is to carry out its own investigation, in accordance with the procedure of Article 1 of Law 3938/2011 and article 10 of these Regulations; or

c) if the case is to be referred to the competent disciplinary body, in which case a new investigation or completion of disciplinary proceedings will be ordered, in accordance with what is accepted by the European Court of Human Rights. The Ombudsman, reserving its right to investigate and draw up the relevant conclusion, forwards its decision to re-investigate the case with all the information in the file to the competent service, indicating specific investigative acts that must be carried out or information that should be considered. The EMIDIPA decision is binding for the competent authority.

16. In the event that, under 15 b. & c. above, proceedings are brought against an employee for the second time for the same disciplinary offence, EMIDIPA highlights any new or delayed information or material defects in the process which have emerged from the judgment of the European Court of Human Rights.

17. The presentation of the above cases is a special chapter in the EMIDIPA Annual Report.

VI. - Final provisions

18. Any issues relating to the operation of EMIDIPA that are not specifically regulated by these Regulations are subject to the general provisions of the Ombudsman's Operating Regulations (Presidential Decree 273/1999), Law 3094/2003 and Article 1 of Law 3938/2011. From the entry into force of these Regulations, F. number 10/24727/2017 of the Ombudsman is abrogated.

This decision is to be published in the Government Gazette.

Athens, 3 June 2020

The Greek Ombudsman

ANDREAS POTTAKIS

Abbreviations

SC	Supreme Court
Art.	Article
No.	Number
PD	Police Department
VAS	Book of Offences and Incidents
See	See
GADA	Attica Police Headquarters
GADTH	Thessaloniki Police Headquarters
GEPAD	Regional Police Headquarters
DAEA	Attica Police Operations Directorate
DEE	Forensics Police Department
DIAS	Motorcycle Police
DIAT	Order Reinstatement Squad
DIMET	Public Order Directorate
UNCRC	United Nations Convention on the Rights of the Child
Sub.	Subsection
ECtHR	European Court of Human Rights
EDE	Administrative Inquiry Under Oath
EU	European Union
EKAM	Special Suppressive Anti-Terrorist Unit
ELAS	Hellenic Police

EMIDIPA	National Mechanism for the Investigation of Arbitrary Incidents
NPM	National Preventive Mechanism
ECHR	European Convention on Human Rights
PU	Private Use (vehicle)
Et al	And others
Chapt.	Chapter
Etc.	Et cetera
CCP	Code of Criminal Procedure
JMD	Joint Ministerial Decision
RIC	Reception and Identification Centre
LS - ELAKT.	Port Authority - Hellenic Coast Guard
NGO	Non-Governmental Organisation
MME	Media
L	Law
LD	Legislative Decree
NPDD	Legal Entity Governed by Public Law
LCS	Legal Council of the State
PI	Plenum
Ibid	ibidem
Para.	Paragraph
PD	Presidential Decree
Case	Case
PDE	Preliminary Administrative Inquiry

PC	Penal Code
PROKEKA	Pre-removal Detention Centre for Aliens
App	Appeal
ACM	Act of Council of Ministers
Eg	for example
C	Constitution
P	Page
CoS	Council of State
GO	Greek Ombudsman
TA	Security Department
F.	File
CPT	European Committee for the Prevention of Torture
ECRI	European Commission against Racism and Intolerance
FRA	European Union Agency for Fundamental Rights
IPCAN	Independent Police Complaints Authorities' Network
OPCAT	Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment



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