

**GREECE**

**In the shadow of impunity**

**Ill-treatment and the misuse of firearms**



**COVER: Grieving relatives: Marinos Christopoulos, a 21-year-old Rom, died after being shot by a police officer in October 2001 © Athens News Agency (ANA)**

In compiling this report Amnesty International (AI) and the International Helsinki Federation for Human Rights (IHF) have enjoyed the collaboration of the IHF's member committee, Greek Helsinki Monitor (GHM), whose reports, research and expertise have been essential to this undertaking. In matters relating to human rights violations against Roma (members of Romani/Gypsy communities), the work of the Minority Rights Group-Greece (MRG-G), and its reports, often produced jointly with GHM, have also been extensively drawn upon.

Anyone wishing for further details or seeking to take part in AI's campaigning should consult AI's web-site <http://news.amnesty.org/greece2002>

For GHM and MRG-G background materials (in English and Greek) to AI/IHF's report: "Greece: In the shadow of impunity - ill-treatment and the misuse of firearms", September 2002, see [http://www.greekhelsinki.gr/bhr/english/special\\_issues/ai-ihf-torture-background.html](http://www.greekhelsinki.gr/bhr/english/special_issues/ai-ihf-torture-background.html) and [http://www.greekhelsinki.gr/bhr/greek/special\\_issues/ai-ihf-torture-background.html](http://www.greekhelsinki.gr/bhr/greek/special_issues/ai-ihf-torture-background.html)

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# **GREECE**

## **In the shadow of impunity**

### **Ill-treatment and the misuse of firearms**

#### **INTRODUCTION**

This report documents the persistence of serious human rights violations in Greece. In particular, it presents numerous allegations of ill-treatment, in some cases amounting to torture, of detainees, generally during arrest or at police stations. It also examines a number of instances of shootings, in disputed circumstances, resulting in the death or wounding of individuals, by law enforcement officials. The use of torture or other forms of cruel, inhuman or degrading treatment or punishment is absolutely prohibited by international human rights law. Further, under international human rights law governments have an obligation to protect life, and international standards require governments to ensure that law enforcement officials resort to firearms only in situations involving imminent threat of death or serious injury, and only when less extreme measures are insufficient. The Greek authorities, when assessing their country's human rights record, have tended to claim that Greece has a particular sensitivity to human rights issues. It is indeed true that Greece has ratified the relevant international treaties, and that there exist significant constitutional and other legal provisions designed to protect human rights. In practice, however, Greece has not secured the consistent implementation of these safeguards.

The allegations of torture or other cruel, inhuman or degrading treatment which are documented in this report raise concerns about the use of physical force by law enforcement officials against detainees, and the failure of the authorities to ensure that legal provisions guaranteeing the protection of detainees in police custody are implemented. While it is not possible to confirm the accuracy of all the allegations, many are supported by convincing medical evidence, and indicate that the problem of police ill-treatment is not one of a few isolated incidents, as the Greek authorities have tended to claim. On the contrary, an examination of these allegations indicates a pattern, and leads to the conclusion that the physical and psychological torture or ill-treatment of detainees by police, whether to force confessions or other information from them, or to intimidate and punish, is relatively widespread. It is disturbing to note that verbal abuse appears to be common, and that this sometimes includes racist abuse or sexual threats intended to intimidate or humiliate detainees. It is also deeply disquieting that children are among the alleged victims.

Other concerns arise out of a series of cases in which police officers have shot and fatally wounded men, in circumstances in which there was either no imminent threat of death or serious injury, or it is questionable whether such a threat existed and whether less extreme measures would not have sufficed. In many of these cases the police officers concerned stated

afterwards that their guns had fired accidentally, an explanation which, if valid, points to serious defects in the professional training of police in handling weapons and assessing risk. In four other incidents, law enforcement officials engaged in border duties are alleged to have fired at Albanian citizens seeking to enter Greece illegally, wounding three of them -- one of them fatally. Greece has a sovereign prerogative to manage its borders and immigration, but the circumstances surrounding these incidents raise serious doubts as to whether the use of firearms was in accordance with international standards.

Most of the cases outlined in the report occurred during 2001 and the first half of 2002, but some, which have been the subject of lengthy legal proceedings, date back to the mid-1990s. The information about these cases is derived from a variety of sources, primarily written complaints by, or interviews with, alleged victims, legal documents such as court decisions and forensic medical reports supplied by victims or their lawyers, and press reports. Other sources include reports by intergovernmental organizations (IGOs) and non-governmental organizations (NGOs) concerned with human rights, refugees and immigrants, the Greek Ombudsman's Office, the National Human Rights Commission and information provided by the Greek authorities. Where possible, the information on cases referred to has been updated to the end of July 2002.

The report does not claim to be a comprehensive record or analysis of human rights violations by law enforcement officials in Greece. The true extent of this problem is known to no one, and such abuses are undoubtedly under-reported.

To what extent are the cases described in the report representative? In general, the report confirms observations by IGOs and NGOs that Roma and immigrants are particularly at risk of abuses at the hands of law enforcement officials. The pattern is sufficiently clear to leave little room for doubt that xenophobia and racial profiling have played a part in the human rights violations suffered by members of these groups, whose complaints have sometimes included specific allegations of racist verbal abuse by police officers. The marginalized and insecure status of many members of these groups, as well as financial constraints and language obstacles, ensure that few victims file formal complaints. Those who do lodge complaints have usually done so only with the support of NGOs working with these groups.

As this report illustrates, members of the majority Greek population are not spared these human rights violations. They too have alleged, often with supporting medical evidence, that they were tortured or otherwise ill-treated by police officers. In most cases, however, they are somewhat better placed, if only by virtue of language and the access to information this affords, to make their complaints known and to initiate legal action to obtain redress.

It should be stressed that Greece is legally committed to the absolute prohibition of torture or other cruel, inhuman or degrading treatment in all cases and all circumstances. The fact that some of the alleged victims whose cases are described in this report were criminal suspects, or may have committed criminal offences (in almost all cases, minor) in no way justifies their ill-treatment or the excessive use of force by police. The extent to which this principle is known to, and accepted by, police officers and the public is open to question, and

it seems likely that the ill-treatment of criminal suspects is more common than is publicly reported.

Under international human rights law allegations of torture or ill-treatment and of arbitrary killings must be promptly, thoroughly and impartially investigated and victims, or their families, must be granted reparation. Judicial and internal police inquiries have been launched into many of the cases described in this report, and this is in itself a positive feature, which must be welcomed. Yet practice shows that law enforcement officials have rarely been brought to justice, and that even when tried and convicted, their punishment has almost always been nominal, involving a suspended prison sentence. This conclusion is borne out by official statistics relating to complaints of torture or ill-treatment, which point to almost total *de facto* impunity for police officers in such cases.

The report indicates some of the reasons which have contributed to this situation: these include the failure to ensure that investigations are prompt, thorough and impartial; police “solidarity” which can obstruct the identification of the perpetrators of torture or ill-treatment; the lack of legal aid for complainants; and the tendency of courts to give greater credence to the testimony of police officers than to that of alleged victims even when the latter can present strong supporting evidence. It cannot be stressed too strongly that this effective impunity encourages the persistence of human rights violations and far outweighs the impact of any verbal declarations by government ministers condemning such practices.

At the time of writing this report a number of new laws were reported to have been drafted or to be in preparation, relating to police training and the use of firearms by police, legal aid and measures to speed up legal proceedings -- all areas of concern highlighted in this report. Details of these laws, and above all, of their practical enforcement, remain to be seen. However, an undoubted major achievement has been the establishment in the past five years of the Ombudsman's Office and the National Commission for Human Rights. These institutions have taken the authorities to task on specific issues or complaints, including those related to immigrants and minorities. They have also provided carefully researched analyses of problems in this field and proposals, legislative and practical, for remedying them.

In this report Amnesty International (AI) and International Helsinki Federation (IHF) reiterate some of these proposals and conclude with specific recommendations for the measures necessary to end torture and ill-treatment, prevent the unlawful or excessive use of firearms by law enforcement officials, and ensure that victims obtain redress and reparation, should such violations take place. At the heart of these recommendations is the principle that legislation and government directives, however well-intentioned, cannot of themselves protect human rights -- only their enforcement can. Many of the cases outlined in this report are currently under investigation. It remains to be seen whether these cases, and others similar, will be promptly, thoroughly and impartially investigated, whether law enforcement officials reasonably suspected of human rights violations are brought to justice, and whether those victims with well-founded complaints are granted fair and adequate compensation. It is by such practical steps, rather than by declarations, that a state demonstrates that it is genuinely sensitive to human rights.

## A. BACKGROUND

### A changing society

“Problems of racism, intolerance, discrimination and exclusion persist ... and are particularly acute vis à vis the Roma/Gypsy population, Albanians and other immigrants, as well as the members of the Muslim minority. These problems are connected with the low level of recognition, within Greek society, of its multicultural reality, an acknowledgement which is all the more urgent given the new patterns of migration to Greece in recent years.”<sup>1</sup>

Until relatively recently, Greece’s population was very homogeneous; the overwhelming majority of its citizens identified themselves as ethnic Greeks and Eastern Orthodox Christians. This homogeneity has been highly valued, and the existence of ethnic minorities within Greece is still a sensitive issue. To this day the only officially recognized minority is the “Muslim minority” in Western Thrace, which in fact consists of three ethno-linguistic groups. These traditionally identified themselves as Turks, Pomaks (Muslims speaking a Bulgarian dialect), and Muslim Roma; nowadays the overwhelming majority identify themselves as Turks. Communities or individuals who have wished to express and promote other identities have encountered official hostility and sometimes penal prosecution. For example, courts have refused to register two associations promoting Turkish identity, and an association promoting Macedonian identity had not been able to register by May 2002, despite a ruling by the European Court of Human Rights which in 1998 found Greece in violation of the right to freedom of association.<sup>2</sup> Romani communities, whether identifying themselves as Muslim or Christian, have -- as elsewhere -- experienced racial discrimination and persecution. Religious minorities, including Muslims, Catholics, Jehovah’s Witnesses and Evangelicals, have also at times experienced discrimination, including legal and administrative restrictions on religious practice. Members of non-Orthodox religious groups have been prosecuted for proselytizing and the European Court of Human Rights has in a number of instances found Greece in violation of the right to religious freedom.<sup>3</sup> Greece has not signed or ratified the European Charter for Regional or Minority Languages and is one of the few member states of the Council of Europe which has not ratified the Framework Convention for the Protection of National Minorities. Nonetheless, it may be significant that in 2000 and 2001 courts on several occasions acquitted defendants prosecuted for seeking to exercise their right to religious freedom, or to assert alternative cultural identity, indicating a possible change in penal policy, despite continuing official and unofficial resistance to greater toleration in these matters.

However, over the past 10 years there have been developments which have presented a more serious challenge to the perception of Greece as ethnically and religiously

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<sup>1</sup>European Commission against Racism and Intolerance, *Second Report on Greece*, 27 June 2000.

<sup>2</sup> *Sidiropoulos and others v. Greece*, 1998.

<sup>3</sup> For example: *Kokkinakis v. Greece*, 1993; *Manoussakis and others v. Greece*, 1996; *Larissis and others v. Greece*, 1998; *Serif v. Greece*, 1999.

homogeneous. In the past, poverty and the search for greater opportunity led generations of Greeks to emigrate, in particular from rural areas. A combination of factors -- Greece's increased economic prosperity and membership of the European Union (EU), the opening of borders in Eastern Europe and economic and political crises in Albania -- has reversed this situation. Greece has become a country which attracts immigrants, the great majority from neighbouring Albania, but also many others from Central and Eastern Europe, the Middle East, Asia and Africa. As a consequence, the number of foreign nationals in Greece has risen sharply; immigrants are now estimated to account for up to 10 percent of a total population of some 11 million -- one of the highest percentages in any European country.

Neither the state, nor society more generally, was well prepared for these developments. As a consequence, the state has been slow to construct a coherent policy with regard to immigrants, resulting in a decade of considerable confusion. Greece has had relatively high levels of unemployment and, as in many other countries, the arrival of people of different race, religion and culture has often provoked fear and resentment. In particular, immigrants have often been blamed for rising crime rates. According to a survey carried out in April to May 2000 by Eurobarometer for the European Monitoring Centre on Racism and Xenophobia (EUMC), 38 percent of Greeks were "disturbed" by the presence of foreign nationals in Greece, the highest percentage in the EU (the EU average was 15 percent).<sup>4</sup> Subsequent Eurobarometer polls have confirmed this finding. Nonetheless, it is striking that when directly confronted with human need, such as the arrival of shiploads of distressed and desperate immigrants, the popular response has often been generous and compassionate.

Greece has ratified international treaties such as the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) which prohibit discrimination on the basis of "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". It has also ratified the International Convention on the Elimination of All Forms of Racial Discrimination (Convention against Racial Discrimination).<sup>5</sup> However, to date there has been little domestic legislation prohibiting racism and enforcing the principle of non-discrimination, and existing provisions have almost never been invoked.

The European Commission against Racism and Intolerance (ECRI), in its *Second Report on Greece* published in June 2000, made several recommendations, including the introduction of a single and comprehensive body of anti-discrimination legislation in civil and administrative law, adequate provision of legal aid to victims of racist or discriminatory acts, and the creation of an independent specialized body to deal with cases of racial discrimination and intolerance. The report also urged Greece to consider changes to criminal law "such as defining common offences with a racist or xenophobic nature as specific offences or enabling the racist or xenophobic motives of the offender to be specifically taken into account". The ECRI emphasized, however, that legal changes were not in themselves sufficient, and also

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<sup>4</sup>[http://europa.eu.int/comm/public\\_opinion/archives/eb/eb53/eb53\\_en.pdf](http://europa.eu.int/comm/public_opinion/archives/eb/eb53/eb53_en.pdf)

<sup>5</sup>Greece has not yet recognized the competence of the UN Committee on the Elimination of Racial Discrimination (CERD) to receive complaints from individuals or groups under Article 14 of the Convention.

recommended other measures, including “raising the awareness of the police and the prosecuting authorities about the need to combat racism and discrimination and to take into account the racist motivation of offences”. These recommendations have been largely endorsed by the National Commission for Human Rights, which made further specific proposals to the government for legislative and practical measures to combat racial discrimination in a memorandum of 12 December 2001.<sup>6</sup> According to a press report, work on drafting new anti-discrimination legislation has started.<sup>7</sup>

### **Police training**

The ideals to which the Greek police are officially expected to conform are admirable. In November 2001 the Minister of Public Order stated: “The Ministry neither comprehends nor will it tolerate conduct by police officers which conflicts with the law and the mission of the Greek Police ... The security of the citizen and respect for human rights are synonymous with, and indissolubly linked to, the work of the police.”<sup>8</sup> Greece’s fifteenth periodic report to the UN Committee on the Elimination of Racial Discrimination (CERD) provided an outline of the program of human rights training given by the Department of Professional Training of Staff Officers. This includes lectures on the causes of racist and xenophobic crimes and their eradication, domestic legislation in this field, refugee issues, immigrants, Roma, social minorities, fundamental rights, and constitutional safeguards concerning arrest and detention. Border guards are taught constitutional law, the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), the ICCPR, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) and refugee law. However, although this program appears to cover many relevant issues, it seems that it may be insufficiently grounded in the realities of police work. The outline makes no reference, for example, to training in international human rights standards specifically relating to the work of police, such as the UN Code of Conduct for Law Enforcement Officials, or the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. This may be simply because the outline is necessarily a summary, or it may be a significant omission.

At any rate, the human rights violations documented in the present report reveal a striking disparity between practice and the ideals enshrined in training and official policy. This situation may be partly explained by a still vigorous “counter-culture” amongst police at the level of the police station and the patrol van which sets little store by the protection of human rights, and does not necessarily always have much regard for even the orders of its own ministry. A telling example concerns the bulletins setting out the rights of detainees which police are required to distribute to detainees on their arrival at police stations or detention centres. It is reported that in practice this requirement is frequently, if not routinely, ignored -- despite repeated reminders and directives of the Ministry of Public Order. However, the persistence of human rights violations by police must be primarily attributed to a management failure on the part of senior police staff and to a lack of political will on the part

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<sup>6</sup>National Commission for Human Rights, *Report 2001*, p.197.

<sup>7</sup>*Ta Nea*, Athens, 3 May 2002.

<sup>8</sup>*Macedonian Press Agency*, Thessaloniki, 26 November 2001.

of the government to ensure that police officers are required to observe the law and that those who transgress are sanctioned.

There has for some time been a general recognition that the professional training of the Greek police has been deficient. In early 2002 a draft law on the training of police was being drawn up, the details of which had not yet been made public at the time of writing this report. It is to be hoped that new legislation will ensure that police are not only well-informed about human rights, but that they are given the practical and professional skills -- as well as the resources -- to enable them, without violating human rights, to engage in the complex and sometimes dangerous duties of preventing and combating crime.

### **National monitoring mechanisms**

Apart from the significant contribution of NGOs in monitoring human rights violations, the main institution in this field is the Ombudsman's Office, an independent body which began work in October 1997 and has since been very active. One of its four sections deals with human rights issues. It investigates individual complaints against state bodies, provided these are not pending before law courts, and makes recommendations to the competent authorities for the resolution of complaints it finds to be justified. The Ombudsman's Office also publishes an annual report as well as other reports on matters within its competence. During 2001 these included reports on the conditions of detention in police cells and holding centres on the islands of Chios and Kos and at the Attica General Police Headquarters in Athens. It also published a report examining the provisions of the "Law on Aliens" adopted in June 2001, and problems related to its application. In April 2002 the Ombudsman submitted proposals to the authorities for amendments to this law.

The National Commission for Human Rights (NCHR), an advisory body to the prime minister, was more recently established and started work in January 2000. It is composed of representatives of a broad range of institutions, including four NGOs, parliamentary political parties, trade unions, the State Council, Supreme Court, Ombudsman's Office, the National Radio and Television Council, government ministries, universities and the Athens Bar Association. The NCHR does not receive individual complaints, but researches human rights issues, makes recommendations to the government and monitors the compliance of Greek legislation with international human rights standards. It is severely under-resourced. Nonetheless, during 2001 its reports and recommendations covered issues such as a review of the constitution, religious freedom, alternative civilian service, the protection of refugees, conditions of detention, legal aid, the protection of Roma and the use of firearms by police.

Given the undoubted authority and standing of these two institutions, it is to be regretted that their recommendations appear sometimes to be ignored or are implemented only partially or with delay.

A further recently established body, which appears to be the only institution to publish statistics concerning police abuses, is the Bureau (Directorate) of Internal Affairs of the Greek Police. The Bureau was created by the Ministry of Public Order in 1999 with a mandate to detect and carry out the initial investigation of criminal offences involving corruption and abuse of authority by police officers. Its investigations are supervised by the

Appeals' Prosecutors of Athens and Thessaloniki. The offences specifically referred to in the law establishing this Bureau (Law 2713/1999) include, among others, acts of torture and offences against human dignity (Article 137 A-D of the Criminal Code), and abuse of office (Article 239 of the Criminal Code), but not murder or manslaughter. Although the Bureau does not itself necessarily undertake the initial investigation in all cases, other police and prosecuting authorities are required to inform the Bureau when they investigate offences specified in this law. In principle, therefore, the Bureau should have a complete overview and register of these offences. In practice, however, this appears not to be the case: for example, its report for 2001, presented to parliament, records no prosecutions for acts of torture and offences against human dignity, or for grievous bodily injury, although in fact there were such prosecutions.<sup>9</sup>

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<sup>9</sup> See the cases of Arjan Hodi (section B.4.2.1) and Refat Tafili (section B.5).

## **B.TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT**

The available information concerning torture and ill-treatment, in particular complaints filed by alleged victims, indicates that the physical and psychological ill-treatment of detainees by law enforcement officials, generally police officers, is relatively commonplace in Greece. As has been noted, victims are often -- although far from exclusively -- Roma or immigrants. The severity of the ill-treatment varies, but in certain cases may be considered to amount to torture. In September 2001 a detainee is reported to have alleged to delegates of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) that he had been subjected to *falanga*.<sup>10</sup> Since then two detainees have separately alleged that police subjected them to electric shocks (see section B.4.2.2). Such allegations are exceptional, however. The most frequently alleged ill-treatment consists of slaps, punches and kicks. In some cases detainees have alleged that they were beaten with truncheons, pistol or rifle butts. Detainees have also sometimes complained that they were denied water -- in one case it is alleged for up to 24 hours -- following detention, causing further suffering, particularly in high summer temperatures. In a significant number of instances, victims of physical ill-treatment, who have included children, have sustained severe injuries requiring medical treatment or even hospitalization. Psychological ill-treatment, consisting of verbal, sometimes racist abuse, and sexual threats, has also been alleged. While in some cases the aim of ill-treatment seems to have been to force confessions or other information from detainees, in other cases law enforcement officials appear to have indulged in unwarranted violence simply to assert their authority or to punish and intimidate.

### **B.1. A CASE HISTORY – FAILURE OF THE SYSTEM**

The following case history, which concerns the ill-treatment, amounting to torture, of two Roma youths in 1998, is in many respects typical. It exemplifies issues and concerns that repeatedly arise in other cases involving torture or ill-treatment and the attempts by victims -- whether Roma, members of the Greek majority population, or foreign nationals -- to obtain redress and reparation. These issues and concerns are subsequently examined in the report in greater detail, illustrated by other cases.

This particular case led to the prosecution and trial of a police officer (he was acquitted). It thus gives a more or less complete overview of administrative and judicial procedures in such cases. A very brief outline of these procedures is provided, insofar as they directly affect victims or their families (in cases where the victim has died) since these are relevant also to many of the other cases described in this report. Some of these procedures and their implementation are examined in more detail in Section D, to see how they (or a failure to observe them), may undermine the right of the victim or the victim's family to obtain redress and compensation.

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<sup>10</sup>*Falanga* (or *falaka*): beating on the soles of the feet.

## LAZAROS BEKOS AND ELEFTHERIOS KOUTROPOULOS, TWO YOUNG ROMA

### Allegations of ill-treatment <sup>11</sup>

At about 1am on the morning of 8 May 1998 two young Roma, Lazaros Bekos, aged 17, and his friend Eleftherios Koutropoulos, aged 18, were arrested in Mesolonghi. Lazaros Bekos was attempting to break into a kiosk, while his friend Eleftherios Koutropoulos kept watch. According to Lazaros Bekos: *“I was trying to break the second lock ...when plainclothes police officers arrived and hit me on the back of the head with a gun. One of them pushed me to the ground and stamped on me.”* A., a co-owner of the kiosk, was present at the scene.<sup>12</sup>

The two youths were taken to Mesolonghi police station where they were held until the following day and separately interrogated. They allege that they were beaten and threatened with sexual abuse to make them confess to other offences or to provide information about suspected drug-dealers. In subsequent statements Lazaros Bekos said that several police officers beat him with truncheons on his legs, shoulders and neck and that one officer *“took an iron bar from under his desk (the one I had used to force the kiosk) and held it to my throat saying he would choke me if I did not tell the truth”*. The same officer allegedly subjected him to obscene racial abuse. Lazaros Bekos further alleged that a police officer *“... told me: ‘Pull your trousers down. If you don’t pull your trousers down for me to fuck you, you’ll die here’. I said I wouldn’t ... He pulled at the button and undid it. I buttoned it back up and then [they] beat me ...”*.

Eleftherios Koutropoulos made similar allegations: *“When they beat me I yelled and cried. I also heard Bekos shouting and crying.”* He further alleged that a police officer had threatened to rape him with a truncheon.

**Under Greek law, detainees should be immediately informed of their rights on arrival at a police station and should be given a form to sign confirming that they have duly received this information. They should also be permitted to notify their relatives of their detention and allowed to contact a lawyer.**

The two youths allege that they were refused permission to call their parents when they arrived at the police station and that they first saw their relatives in the afternoon of 8 May 1998.<sup>13</sup> No signed documents confirming that they were informed of their rights is to be found in their case-file, and it must be assumed that police at the station disregarded this legal obligation. The two young men also allege they were not allowed to contact a lawyer. There is conflicting evidence as to whether an attempt was made by police officers at the station to contact a lawyer on their behalf, and whether such a lawyer ever came to the police station. A police officer subsequently made contradictory statements, under oath, on this point. An

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<sup>11</sup>GHM/MRG-G and the European Roma Rights Centre (ERRC) initially interviewed Lazaros Bekos and Eleftherios Koutropoulos and subsequently engaged legal counsel on their behalf. Trial proceedings against the police officer accused of ill-treating them were observed by GHM/MRG-G and by a representative of AI.

<sup>12</sup>The names of people referred to in this report by single letters are known to AI/IHF.

<sup>13</sup>From an interview on 9 May 1998 with GHM/MRG-G and statements made in court on 8 October 2001.

undisputed fact, however, is that no lawyer was present during their interrogation by police officers.

On the morning of 9 May the two youths were brought before a local public prosecutor, who charged Lazaros Bekos with attempted theft and Eleftherios Koutropoulos as his accomplice, set a date for their trial and ordered their release.<sup>14</sup> They did not complain to the prosecutor about their ill-treatment. According to Lazaros Bekos they had been warned by police “not to say anything or they would send us to prison in Ioannina”.

### Medical evidence

**Under Greek law, a victim of torture or ill-treatment does not have direct access to examination by state forensic services. Such an examination can only be obtained by order of investigating officials or a court.**

Representatives of Greek Helsinki Monitor (GHM) and Minority Rights Group-Greece (MRG-G) took the two youths on 9 May for a hospital examination in Mesolonghi and to a forensic medical specialist in Patras.

The certificate issued by this specialist recorded injuries inflicted by a “heavy blunt instrument” about 24 hours before their examination. In the case of Lazaros Bekos these injuries consisted of: “Two 10cm parallel ‘double bruises’ on his skin, dark red (almost black) in colour, on his left shoulder ... extending to the area of his right shoulder”. Eleftherios Koutropoulos’ injuries included: “Multiple 12cm parallel ‘double bruises’ on his skin, dark red (almost black) in colour, on his left shoulder, including ... bruising of about 5cm on the back of the left upper arm, bruising of about 2cm on his left wrist.” (The bruises on the two youths are clearly visible in photographs taken the same day.)

Later, when the case came to trial, this certificate could not be accepted by the court as “expert testimony” because the examination of the two youths had not been ordered by authorized officials. It was, however, admitted as evidence, as “a medical opinion”.

### Investigation proceedings

**Police officers alleged to be responsible for torture or ill-treatment or charged in connection with other grave offences (such as unlawful killings) may be subject to a form of internal police inquiry, known as the Sworn Administrative Inquiry, as well as to a judicial investigation under criminal proceedings. Although the two procedures are independent, facts established by a final court decision are taken into account in disciplinary proceedings. Correspondingly, if the administrative inquiry establishes that a criminal offence has been committed the prosecuting authorities must be duly informed. The findings and conclusions of the administrative inquiry are taken into**

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<sup>14</sup>In November 1999 Lazaros Bekos and Eleftherios Koutropoulos were sentenced to 30 and 20 days’ imprisonment respectively, suspended for three years, plus court expenses.

account during criminal proceedings. Neither procedure, however, is bound by the findings and conclusions of the other.

### **The Sworn Administrative Inquiry**

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

This apparently unambiguous finding was not accepted by his superiors. On 14 July 1999 the Chief of the Greek Police issued an order stating that it had been established that Apostolos Tsikrikas “*did not take the required measures ... and did not prevent inadmissible and brutal conduct, on the part of his subordinates, against the two detainees, with the result that the detainees were beaten by police officers of his service during their detention, as a consequence of which they suffered bodily injuries*”.

Apostolos Tsikrikas was fined 20,000 drachmas (approximately 60 USD at the time) and demoted. It appears that no disciplinary measures were taken against the second officer. The subordinates allegedly responsible for beating the two Roma were not identified in the above order, nor did the police authorities make any subsequent attempt to investigate and establish their identity. Lazaros Bekos and Eleftherios Koutropoulos did not have the right to appeal against these decisions.

### **The judicial investigation**

**Under Greek law, a prosecutor who receives a report, criminal complaint, or any information that a punishable act has been committed, is required to institute criminal proceedings (by referring the case for investigation).<sup>15</sup> However, he or she may first order a preliminary inquiry (by police) to establish whether a criminal offence has been committed. The prosecutor can close the case only if he or she concludes that the complaint is not founded in law or that it is obviously false; the complainant is entitled to appeal against such a decision. When the investigation is concluded, the prosecutor forwards the case to a judicial council, a pre-trial panel of judges which deliberates *in camera* and rules whether to refer the defendant for trial, dismiss charges or request supplementary investigation.<sup>16</sup>**

**Victims or their families may join criminal proceedings as civil claimants by filing a civil suit for compensation for damages. Civil claimants may, in principle, appeal against decisions of the judicial council (for instance the decision not to refer a**

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<sup>15</sup>Article 36 of the Code of Criminal Procedure (CCP).

<sup>16</sup>The Greek term for Judicial Council (δικαστικό συμβούλιο) is also sometimes translated as Indictment Chamber.

**defendant to trial). They do not have the right to appeal against the judgment of the trial court.**

On 13 May 1998, two days after the publication of the joint GHM/MRG-G letter, the prosecuting authorities in Patras ordered a preliminary inquiry into the allegations of ill-treatment made by Lazaros Bekos and Eleftherios Koutropoulos. The two youths were initially apprehensive about filing a criminal complaint against police officers who continued in active service in the area where they lived, but they eventually did so, with the support of GHM/MRG-G, on 1 July 1998. On 9 September 1998 they identified Apostolos Tsikrikas and two other officers as their assailants. However, the identification process was partially flawed because Deputy Commander B. was on attachment to another unit at the time. In December 1998 -- seven months after the arrest and ill-treatment of the two young Roma -- the preliminary inquiry was concluded and the prosecuting authorities launched a preliminary investigation. The main investigation started in January 2000.

According to Romani sources, certain police officers informally pressured Lazaros Bekos and Eleftherios Koutropoulos, by threats and promised favours, to withdraw their complaint. In January 1999, and again in February 2000, the two youths requested that criminal proceedings be stopped, although they continued to maintain that they had been ill-treated by police officers. The investigation nonetheless continued and they later withdrew this request. On 31 August 2000, more than two years after the incident, the prosecutor sent the case to the Judicial Council of the Court of Misdemeanours of Mesolonghi with a motion to refer three police officers (Apostolos Tsikrikas and two colleagues) for trial. However, in September 2000 the judicial council ruled that there was sufficient evidence to refer only Apostolos Tsikrikas for trial.

### **Trial proceedings**

On 8 October 2001 Apostolos Tsikrikas was tried by the Appeals' Court of Patras on charges under Article 137A (3) of the Criminal Code (CC), which provides for a prison sentence of between three to five years' imprisonment for offences against human dignity.<sup>17</sup> At the trial counsel acting for Lazaros Bekos and Eleftherios Koutropoulos argued that they had been consistent in identifying the defendant as one of the police officers who had beaten them, and that medical evidence confirmed injuries consistent with their allegations, which were also supported by photographs. He additionally emphasized the findings of the administrative inquiry.

Apostolos Tsikrikas denied that he had personally ill-treated the youths, but conceded that another police officer, whom he named, might have beaten them, not at the police station, but at the time of their arrest, when he himself was not present. His lawyer called into question the truthfulness of the testimony of Lazaros Bekos and Eleftherios Koutropoulos and the severity of their injuries.

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<sup>17</sup>Under Articles 40 (2) and 24 of Law 1481/84 in conjunction with Article 111 (7) of the CCP, police officers of the rank of lieutenant and above, if indicted with offences classified as misdemeanours, are tried in first instance by an appeals' court.

Five police officers testified that Apostolos Tsikrikas had not ill-treated the two youths; one colleague reportedly characterized Apostolos Tsikrikas as “an excellent police officer who has arrested a lot of gypsies for theft and drugs”, and claimed that there must be some (unspecified) ulterior motive behind his prosecution. The prosecutor called for Apostolos Tsikrikas to be acquitted.

Summing up the case, the court allowed that Lazaros Bekos and Eleftherios Koutropoulos might have suffered injuries during arrest, and suggested that these might have been caused by A., the co-owner of the kiosk. The grounds for this suggestion are unclear: no evidence was presented in court that A. had been armed with a “heavy blunt instrument” at the time of the arrest of the two youths, or that he had in any way assaulted Lazaros Bekos, while A.’s testimony that he had simply caught hold of Eleftherios Koutropoulos was confirmed by the latter in court. The court concluded: “However, even if certain of the bruises were inflicted by police officers during their detention in custody it has not been proved that the defendant ... participated in this in any way.” On 9 October 2001 the court acquitted the defendant. Lazaros Bekos and Eleftherios Koutropoulos did not have the right to appeal against the court’s decision.

As has been seen, in this case the victims -- Lazaros Bekos and Eleftherios Koutropoulos -- were able to provide clear medical evidence, issued by a forensic medical expert, of their injuries. They also had the benefit of legal counsel, and the support of the initial findings of the administrative inquiry, which identified two officers as responsible for their ill-treatment. Yet the outcome of protracted legal and administrative proceedings in this case, lasting over three and a half years, was to leave unresolved the question as to who was responsible for their ill-treatment, and to afford impunity to the perpetrators.

Lazaros Bekos and Eleftherios Koutropoulos had joined criminal proceedings as civil claimants. The court, as it is entitled to do under Greek law, declined to deal with their claim for damages, and instead informed them of their right to file their claim with an administrative court. However, the claimant’s position in proceedings before the administrative court is unfavourable, when -- as in this case -- the defendant is acquitted in criminal proceedings. Consequently, it would appear that having been denied their right to freedom from torture and ill-treatment and their right to redress, the two young Roma further risk the denial of their right to fair and adequate compensation. Such an outcome can only contribute to the persistence of similar abuses. It also offers little hope to other victims of torture or ill-treatment who may contemplate seeking redress and reparation through the courts.

In April 2002 the European Roma Rights Centre (ERRC) and GHM filed an application with the European Court of Human Rights on behalf of Lazaros Bekos and Eleftherios Koutropoulos, on the grounds that their rights under the European Convention on Human Rights had been violated, specifically their rights under Articles 3 (the right to freedom from torture or inhuman or degrading treatment or punishment), 13 (the right to an effective remedy before a national authority) and 14 (right to freedom from discrimination).<sup>18</sup>

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<sup>18</sup>File number: 15250/02.

### Concerns

As has been noted, the case of Lazaros Bekos and Eleftherios Koutropoulos raises a number of concerns which have a more general relevance to other instances in which Greek police are alleged to have tortured or ill-treated detainees. They include:

- Alleged violations of the rights of detainees in police custody as provided for in Greek law and in international human rights standards (in particular, the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment).
- Violation of the right to freedom from torture or other cruel, inhuman or degrading treatment or punishment, as guaranteed in national and international law.

It should be noted that the ill-treatment which Lazaros Bekos and Eleftherios Koutropoulos allege they suffered -- in particular, the beatings and verbal abuse -- is consistent with the general pattern of ill-treatment by police in Greece as described by many other alleged victims. Alleged victims have included children (Lazaros Bekos was 17 years old at the time of his arrest, and by general international consensus, which puts the age of majority at 18 years, was still a child).<sup>19</sup>

- Race-related torture or other ill-treatment: the ill-treatment of these two young Roma conforms to a pattern which indicates that Roma and immigrants are at increased risk, because of their ethnic or national origin, of being subjected to physical ill-treatment and other human rights violations by police.

Each of the above concerns is examined in more detail below.

Further concerns are examined in Section D of this report, in particular those relating to:

- the failure to ensure prompt, thorough and impartial investigation of allegations of torture or ill-treatment;
- unduly protracted judicial proceedings;
- the failure to ensure the victim's right to fair and adequate compensation;
- effective impunity for law enforcement officials responsible for torture or ill-treatment.

## **B.2. THE PROHIBITION OF TORTURE AND ILL-TREATMENT -- PROVISIONS IN INTERNATIONAL AND GREEK LAW**

The right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment is a fundamental norm of international human rights law. It is recognized in Article 5 of the Universal Declaration of Human Rights and is enshrined in Articles 4 and 7 of

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<sup>19</sup>Under Article 1 of the Convention on the Rights of the Child: "For the purposes of the Convention, a child means every human being below the age of 18 unless under the law applicable to the child, majority is attained earlier."

the ICCPR, in Articles 3 and 15 of the European Convention on Human Rights and in Article 1 of the Convention against Torture. Greece is party to all these international human rights treaties.

### **The Convention against Torture**

Article 1 of the Convention against Torture defines torture as “*any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed, or intimidating him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity*”.

In 1988 when it ratified the Convention against Torture Greece explicitly undertook:

to prevent torture taking place within its territory under any circumstances whatsoever by taking effective legislative, administrative, judicial or other measures;

to educate and train law enforcement officials fully regarding the prohibition of torture;

to ensure that its competent authorities proceed to a prompt and impartial investigation of cases where there are reasonable grounds to believe that an act of torture has been committed and to prosecute alleged torturers;

to ensure that victims of torture have the right to fair and adequate compensation or, where a death occurs as a result of an act of torture, the victim’s dependants are entitled to compensation;

to ensure that any statement which is established to have been made as a result of torture should not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made;

to review systematically interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

### **National law**

The Greek Constitution specifically prohibits the use of torture and ill-treatment. Article 7(2) states that: “*Acts of torture, any kind of bodily ill-treatment, damage to health or the use of psychological violence, as well as any other offence against human dignity, are prohibited and punished as provided by law.*” Since 1984 torture and ill-treatment have also been explicitly proscribed in the Greek Criminal Code with the addition of Article 137A-137D dealing with “*Torture and other offences against human dignity*” under Law 1500/1984.

Under the provisions of Article 137A(1): “An official or military officer whose duties include the prosecution, interrogation or investigation of criminal offences or disciplinary offences or the execution of sentences or the guarding or custody of detainees, is punished ... if he subjects to torture, during the performance of these duties, a person who is under his authority with the aim of a) extorting from this person or a third person a confession, testimony, information or statement, or the repudiation or acceptance of a political or other ideology; b) punishing; c) intimidating the person or third persons.”

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

The prescribed penalty, in principle, for someone found guilty of torture is from three years’ to life imprisonment. The most serious cases (such as, for example, the use of *falanga* or electro-shock equipment) are punishable by a minimum of 10 years’ imprisonment -- or life imprisonment if the victim dies (Article 137B).

Under Article 137A (3) less serious cases involving “physical injury, injury to the health, the use of illegal physical or psychological force and any other serious offence against human dignity, which is committed by persons under the conditions and for the purposes defined [above]”, are punishable by three to five years’ imprisonment. Offences against human dignity include in particular a) the use of a lie detector, b) prolonged isolation and c) a serious offence against sexual dignity.

Additionally, persons convicted of torture are automatically deprived of their political rights and dismissed from their jobs. The victim has the right to claim material compensation from the state for damages done to him or her and pecuniary satisfaction for psychological and moral damage.<sup>20</sup> It is further provided that a state of emergency or a superior’s order do not justify any acts of torture.

Under Article 177(2) of the Code of Criminal Procedure (CCP) evidence obtained by illegal means (for example, torture or ill-treatment) is not admissible in court.

### **The reluctance of prosecuting and judicial authorities to invoke Article 137A**

Although Article 137A is clearly formulated so as not to restrict its application to “classical” situations of torture in which an investigating official uses extreme physical coercion to obtain confessions from a detainee, in practice prosecutors and courts tend to interpret it restrictively in this sense. As Dionysios Spinellis has noted, as early as 1992 a legal commentator remarked on a “tendency to establish a tradition of the non-application of Article 137A”.<sup>21</sup> Reinforcing this point, Professor Spinellis cited critically several cases in which courts had ruled that the defendant (a police officer) had not committed an offence

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<sup>20</sup>Under Article 137D (4) and Article 105 of the Civil Code Introductory Law.

<sup>21</sup>Argyropoulos re decision AII 1091/1992, referred to in a paper given by Dionysios Spinellis, Professor of Law, Emeritus, of Athens University, at a seminar on torture held by the Greek Section of Amnesty International in October 2001.

under Article 137A on the grounds that he had not been acting in the capacity of an investigating official, or had been motivated by anger and the desire to punish, rather than the wish to extract a confession. Professor Spinellis concluded that this was in effect to confuse its provisions with the more restrictive provisions of Article 239 CC, dealing with “Abuse of office” -- a lighter offence. Under Article 239(a) an official whose duties include the prosecution or investigation of criminal offences and who “*unlawfully employs coercive methods to obtain any written or oral statement from an accused, a witness or an expert witness shall be punished by imprisonment for not less than one year, in so far as the offence is not punished under Articles 137A and B*”.

All the available information confirms that prosecutions under Article 137A have been very rare, and that police and other law enforcement officials who ill-treat detainees -- if they are to be prosecuted at all -- are more likely to be charged under Article 239 or with offences such as “Bodily injury” (under Articles 308 to 310 CC), “Threat” (Article 333 CC) or “Insult” (Article 361 CC). It is perhaps also significant that the only two cases known to AI/IHF (in the period 1998 to the end of June 2002) in which police officers have been indicted and tried under Article 137A have conformed to the restrictive interpretation of this article; they concerned police officers accused of having tortured detainees (three of them children) in order to force confessions or other information from them. In both cases the accused police officers were acquitted.<sup>22</sup>

### **B.2.1. Intergovernmental organizations on Greece’s compliance with international standards**

Intergovernmental organizations (IGOs) have continued in recent years to voice concerns about torture and ill-treatment in Greece, and have explicitly related these practices to discrimination against foreign nationals and members of minorities.

#### **The UN Committee against Torture (CAT)**

In May 2001 the UN Committee against Torture considered Greece’s third periodic report on its compliance with its obligations under the Convention against Torture.<sup>23</sup> In its conclusions and recommendations issued on 8 May the Committee expressed concern that: “*although the domestic legislation provides a satisfactory framework for protecting human rights in general and of certain Convention rights in particular, difficulties in effective implementation remain, which may amount to a breach of the Convention*”.<sup>24</sup>

Its first conclusion was that “*there is evidence that the police sometimes use excessive or unjustifiable force in carrying out their duties particularly when dealing with ethnic and national minorities and foreigners*”.

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<sup>22</sup> See the case of Lazaros Bekos and Eleftherios Koutropoulos (section B.1) and the case of Paraskevas Tranteros and Dimosthenes Argyroudis (section B.5)

<sup>23</sup> CAT/C/39/Add.3, 27 April 2000 (text of Greece’s third periodic report).

<sup>24</sup> Concluding observations of the Committee against Torture: Greece. 08/05/2001. A/56/44, paragraphs 83-88. (Concluding Observations/Comments)

Another of its concerns was: “*the lack of comprehensive training of medical personnel and law enforcement officers at all levels, on the provisions of the Convention*”.

The Committee accordingly recommended that: “*such measures as are necessary, including training, be taken to ensure that in the treatment of vulnerable groups, in particular foreigners, ethnic and national minorities, law enforcement officers do not resort to discriminatory practices*”.

### **The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)**

In 1991 Greece ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which provides for a system of regular inspections of places of detention by the CPT. CPT delegations have visited Greece on five occasions. The CPT’s report on its first visit in 1993 was published in 1994, but government authorization for the publication of the CPT’s reports on three subsequent visits (in 1996, 1997 and 1999), and government responses to these reports, was delayed until September 2001. The CPT last visited Greece in September 2001.<sup>25</sup>

**According to a press report, in the course of the CPT’s visit in September 2001 many detainees held in police establishments complained to the CPT delegation that law enforcement officials had ill-treated them; a medical examination by CPT delegates with relevant expertise confirmed that some had injuries consistent with these allegations.**

**In the view of the CPT in a number of cases the credibility of the allegations was reinforced by the detainees’ evident fear that police officers would beat them in reprisal if they learned that detainees had complained about them. The CPT reportedly cited the following cases:**

**At Hania Police Headquarters (in Crete) a detainee complained to the CPT that police officers had beaten him all over his body while arresting him and during interrogation. He had abrasions and bruises on his hands, legs and stomach and an eye injury.**

**At Igoumenitsa Police Headquarters (north-west Greece), two detainees complained that they had been brutally beaten by police. One alleged that during interrogation he had been beaten on the back and legs with a truncheon. A medical examination confirmed that he had bruises on his shoulders and left leg. The other detainee complained that he had been beaten on the soles of his feet [*falanga*].**

**Two Albanians who had been arrested by a military patrol on border duty complained that they had been punched and kicked on the head and legs; they had abrasions and swellings.**

**At the Piraeus Port Police Station, a detainee complained that port officials had struck him, knocked him to the ground and kicked him in the ribs. A medical examination found bruises and abrasions.**

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<sup>25</sup> The CPT carried out a two-week visit to Greece, starting on 23 September 2001.

**The Chief of the Piraeus Port Authority and other senior police officers reportedly admitted to the CPT that in certain cases some force was used during interrogation in order to extract information, especially if the detainee had been arrested for drug dealing, but said this was limited to some “slaps” and that severe ill-treatment was not permitted.**

**The CPT further found that police frequently delayed granting detainees their rights, and observed that prosecutors and judicial authorities often failed to take appropriate action when detainees complained of ill-treatment.**

**The CPT called on the Greek authorities to regularly remind members of the security forces that the ill-treatment of detainees is not tolerated and is punished severely. It also called on the police and judicial authorities to examine the complaints of detainees and to impose appropriate penalties, including dismissal from service.**

**The CPT noted that the Greek authorities claim that cases of police ill-treatment are rare and concluded that the authorities underestimate the extent of this problem.<sup>26</sup>**

If the above account accurately reflects the CPT’s report as regards the treatment of detainees in police establishments, it appears that many of the CPT’s conclusions and recommendations set out in its reports on its previous visits, starting in 1993, have been ignored, or if formally introduced, have not been effectively enforced. These all stated that the CPT had received allegations of the ill-treatment of detainees held at police establishments, and that in some cases detainees had injuries consistent with these allegations.

Following its visit to Greece in 1993 the CPT’s recommendations with regard to torture and ill-treatment, and their prevention, at police establishments, included the following:

- Human rights training and adequate training in modern investigation techniques for police officers, together with the introduction of a formal code of conduct for interrogations;
- Diligent examination by the prosecuting authorities and courts of all complaints of ill-treatment brought before them and, where appropriate, the imposition of a suitable penalty;
- Direct access by persons alleging torture or ill-treatment to State forensic medical services;
- Safeguarding the rights of detainees following arrest and detention in police custody.<sup>27</sup>

All these recommendations were reiterated following subsequent CPT visits to police establishments in Greece in 1997 and 1999.<sup>28</sup> Disappointingly, the Ministry of Public Order responded primarily by denials. For instance, in its response of 2 June 2000 concerning the CPT’s reports on its visits in 1997 and 1999, the Ministry categorically rejected the findings of the CPT concerning ill-treatment:

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<sup>26</sup> *Eleftherotypia*, 23 June 2002. The Greek authorities have not yet authorized official publication by the CPT of the report.

<sup>27</sup> CPT/Inf (94)20.

<sup>28</sup> CPT/Inf (2001)17; CPT/Inf (2001)18.

*“Complaints about torture and ill-treatment are thoroughly examined through transparent judicial and administrative procedures.*

*[A] few, isolated cases of misconduct and improper behaviour by certain Police officers can in no way substantiate allegations about the issue of torture and ill-treatment by the Greek Police. **Arbitrary conclusions on this issue as well as resorting to preconceived and biased conceptions** [should] **definitely be kept away from the CPT’s approach** [emphasis as in text].*

*Whenever reprehensible actions committed by isolated police officers have been ascertained, the standing legislation was enforced unwaveringly and with severity. Allegations for “cover-up” have not been substantiated neither by judicial enquiry nor by investigations carried out by the Internal Affairs Unit of the Greek Police. Therefore, the Committee’s remark during its recent visit about ‘credible’ and ‘confirmed’ complaints for ill-treatment of the detainees is not corroborated by facts.”<sup>29</sup>*

The Ministry’s follow-up response of 16 January 2001 was less vehement and included specific replies to CPT recommendations. In particular it stated that police services had repeatedly been instructed to implement legislation and directives concerning the rights of detainees, and that those who failed to do so were subject to disciplinary measures and criminal proceedings. Provisions relating to the prohibition of torture and ill-treatment were included in police manuals, in training, in regular staff meetings, and in a Code of Ethics for police that was to be issued. *“Any perchance deviation from the above principle, except for the reasonable force exercised at the time of the arrest, if the subject offers resistance, is severely punished.”<sup>30</sup>* Yet only some months later, the Greek delegation informed the UN Committee against Torture that not a single police officer had been convicted of torture or ill-treatment in the period from 1996 to 2000.

This reluctance, on the part of the Greek authorities, to frankly acknowledge and address violations of Greece’s human rights treaty obligations persists. Greece’s fourth periodic report to the UN Committee against Torture, submitted on 21 January 2002, asserts that all the activities of the Greek Police Force “are characterized by legality”. The report concludes that the application of the provisions of the Convention against Torture “is fully safeguarded”.<sup>31</sup> This report has been rightly criticized by the NCHR for providing lengthy references to legal provisions but lacking information about their practical implementation. The NCHR, commenting more generally on Greece’s reports on its compliance with international human rights treaties, noted that such reports tended to present an idealized and patriotic picture -- claiming, for example, an “absolute respect for human rights by the police”, which “not only does not correspond to reality in Greece but does not correspond to [reality] in any country”.<sup>32</sup>

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<sup>29</sup>CPT/Inf (2001)19, p.59 (official translation of the Greek Ministry of Foreign Affairs).

<sup>30</sup>ibid., p.77.

<sup>31</sup>CAT/C/61/Add.1.

<sup>32</sup>NCHR Report 2001, p.229.

### **B.3. VIOLATIONS OF THE RIGHTS OF DETAINEES WHICH FACILITATE TORTURE AND ILL-TREATMENT**

Torture and ill-treatment most commonly take place during arrest or after a person is brought to a police station for questioning. The legal safeguards governing these procedures, and their strict observance, are therefore crucial in preventing such practices. Correspondingly, a failure by senior staff in police stations to ensure their enforcement can only facilitate the persistence of these abuses. In practice, it appears that in Greece the legal provisions relating to the rights of detainees, including their right to be informed about their rights, their right to contact family and legal counsel and to be seen by a doctor, are frequently delayed or disregarded.

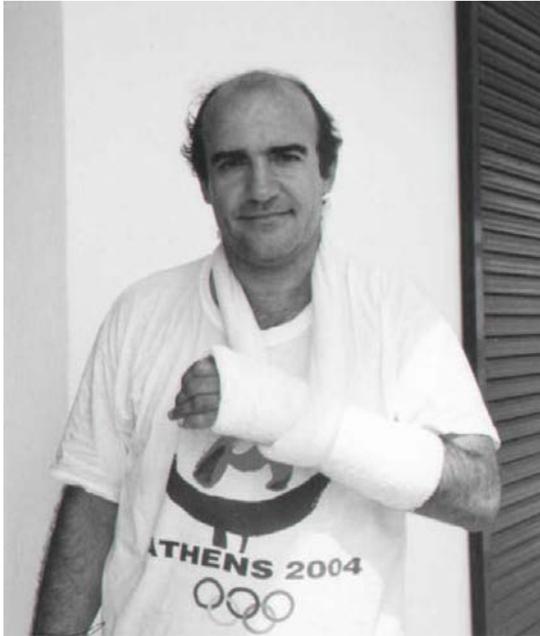
#### **ILIAS HATZIDIAKOS**

Ilias Hatzidiakos, a 40-year old (Greek) man, was stopped and booked for a minor traffic offence by two police officers on 6 July 2001 on the island of Rhodes. One of the officers asked to see his vehicle papers. According to Ilias Hatzidiakos, when he failed to produce these documents quickly enough, the police officer started to book him for this offence too. Ilias Hatzidiakos put his hand on the officer's notepad and asked him to stop. In the criminal complaint which Ilias Hatzidiakos subsequently filed, he stated as follows:

*“The police officer then, with a sudden movement, took my left arm and twisted it sharply, immobilized me, held me by the neck, and after calling over his colleague, handcuffed me. Since I had previously undergone an operation on my left arm and feared that it might be injured, I asked him to stop [twisting the arm] and allowed him to put the handcuffs on without resisting. As soon as they had handcuffed me, they knocked me to the ground and struck my head on the asphalt road. I was injured and bleeding, and they struck my head, but because I was stunned and in pain I was not able to discern whether they were punching me or kicking me.”*

The police officers took him to Afantos Police Station where, according to Ilias Hatzidiakos, his requests to make a telephone call to his relatives were refused, as were his requests for water. He was put in a cell, and one of the police officers allegedly threatened him with a gun, saying: “Shut up, don’t speak or I’ll kill you.” This police officer then kicked Ilias Hatzidiakos, who tried to protect himself with his hands.

*“I begged him to be careful of my arm because of an earlier operation for a double fracture, but he kicked me in the stomach and then the left arm, resulting in a further fracture. When I realized [what had happened] I told him: ‘You’ve broken my arm, please call a doctor’. While I was writhing in pain, he tried to kick my genitals and bending to avoid the blow I received the kick in my right ribs. Then I thought my end had come ...”*



**Ilias Hatzidiakos © AI**

Ilias Hatzidiakos's sister, who had been notified by an acquaintance who had witnessed his arrest, came to look for him at the police station but allegedly neither she, nor a lawyer who also came, were allowed to speak to him. A glimpse, however, alerted them to his injuries. Despite their entreaties, the police reportedly refused for three hours to allow him to be taken to hospital. A relative finally succeeded in notifying the Chief of Police of the Dodecanese, who ordered Ilias Hatzidiakos' release and he was immediately taken to Rhodes District Hospital. He remained in hospital from late that night until the evening of 8 July. A medical certificate issued by the hospital records bruises on his forehead, a broken left arm, and abrasions on the right side of the abdomen and the lower sternum.

On 9 July it was reported that the police authorities had ordered an administrative inquiry, and that the two police officers concerned had been temporarily transferred elsewhere.<sup>33</sup> Meanwhile, the Rhodes prosecuting authorities opened a preliminary investigation. On 18 July 2001 Ilias Hatzidiakos filed a criminal complaint against the two police officers on charges of abuse of office, threat, insult and dangerous bodily injury. By the end of June 2002 the judicial investigation had still not been completed.

In August 2001 the administrative inquiry concluded that the two police officers had engaged in a struggle with Ilias Hatzidiakos and by their "inappropriate behaviour" had brought upon themselves, and the Greek Police Force more generally, "unfavourable comments". It recommended that they be punished with a fine, but left the possibility open that if they were subsequently convicted of having caused bodily injuries they might be punished with suspension from service. The final outcome of these disciplinary proceedings is not known to AI/IHF.

### **The rights of detainees under international human rights law and Greek law**

As has been seen, Ilias Hatzidiakos alleged that during his detention in police custody he was denied, in violation of Greek law, his right to notify his relatives of his detention, his right to contact a lawyer, and his right to be examined by a doctor. Had the police officers who detained him been convinced not only of their duty to grant him these rights, but that failure

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<sup>33</sup>*Eleftherotypia*, 9 July 2001

to do so would be appropriately sanctioned, he would almost certainly have been protected from the severe ill-treatment and injury he suffered.

International human rights treaties and standards require, *inter alia*, that people detained in police custody be granted the following rights: the right to be informed of the reason for arrest and detention; the right to notify a relative or third party of arrest; the right of access to a lawyer and to a doctor and also, very importantly, the right to be informed of their rights.<sup>34</sup> These rights are also guaranteed under Greek law. Under Article 6 (1) and (2) of the Greek Constitution a person may be arrested by the police only on the basis of a judicial warrant or *in flagrante delicto*.<sup>35</sup> Article 278 CCP requires law enforcement officials to behave with “*all possible courtesy towards the person they are arresting and to respect his honour. They should not use force unless necessary, and are not permitted to use handcuffs unless the person being arrested resists or is suspected of being likely to flee*”.

A person who has been arrested must be brought before a prosecutor within 24 hours of arrest. If s/he has been arrested on the basis of an arrest warrant issued by an investigating judge (rather than arrested *in flagrante delicto*), or if the offence is a felony, or if the prosecutor considers there are grounds to remand the person in custody, s/he will then be referred to a competent investigating judge.<sup>36</sup> The latter is required, within three days (which can be extended in exceptional cases, with the consent of the competent judicial council, for a further two days), either to release the detainee or issue a decision remanding him or her in custody.<sup>37</sup>

In 1995 the Ministry of Public Order issued a Circular Order which provided for the publication and distribution of two information bulletins setting out the rights of detainees and their translation (reportedly into at least 13 foreign languages).<sup>38</sup> The first bulletin informs detainees of their rights: to a clear and full explanation of their rights; to communicate with their lawyer; to notify family members of their arrest; and to request a medical examination by a police doctor or a doctor of the detainee’s choice at their own expense. It further states that they must be brought before a prosecutor within 24 hours of arrest, and sets out their rights during questioning by police officers. Additionally it sets out the right to visits by family and lawyers, although it neglects to mention that legal aid (the services of a court-appointed lawyer) is available to defendants who cannot afford the services of a lawyer.<sup>39</sup> A second information bulletin sets out the rights of foreigners who have been detained pending deportation.

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<sup>34</sup>See Article 9(2) of the ICCPR, Article 5(2) of the European Convention on Human Rights, and relevant provisions of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (adopted by General Assembly Resolution 43/173 of 9 December 1988).

<sup>35</sup>Under Greek law the concept of *in flagrante delicto* extends from the moment a crime is committed up to the end of the following day (Article 242 CCP).

<sup>36</sup>Articles 279 (1), 282 (3) 246 (3) CCP.

<sup>37</sup>Article 6 (2) of the Greek Constitution.

<sup>38</sup>Circular Order No 4803/22/14-a of 3 November 1995.

<sup>39</sup>Article 17 of Law 2721/1999 provides for the *ex officio* appointment of counsel for defendants, including foreign nationals, who cannot afford the services of a lawyer.

The same circular additionally stipulates that persons arrested by police must be given these bulletins immediately after they are brought to a police station. It also obliges police to explain their rights to detainees orally (where necessary with the aid of an interpreter or consular authority). At the end of the bulletins there is a section to be signed by the detainee and the police officer in which the detainee confirms having duly received the information bulletin and an explanation of his or her rights. Further directives concerning the implementation of this circular and the monitoring of its implementation were reportedly issued by the Ministry of Public Order in 1996, 1997 and 2000. A directive issued in October 2000 ordered that the bulletins be printed in large format, in 14 languages, and posted up in police stations and detention centres.

### **Failure to implement detainees' rights**

In view of these detailed, and apparently reiterated, instructions issued by the Ministry of Public Order it is particularly disquieting that the full procedures relating to the bulletins, as outlined above, appear to be rarely, if ever, properly carried out, and that in practice detainees' rights are reportedly regularly denied, delayed or restricted. Bulletins are reportedly posted up only in some police stations and detention facilities, and even then sometimes in places where they are visible to visitors rather than to detainees.<sup>40</sup> Whereas it must be assumed that this measure was intended to supplement the individual provision of bulletins to detainees, it appears that it is regarded by some police officers as an alternative. Police officers at Hellenikon Holding Centre (where foreigners are detained pending deportation) reportedly remarked to GHM representatives: "Since these rights are posted up, we do not need to issue [the bulletins] individually."<sup>41</sup>

During its visit to Greece in 1997 the CPT's delegation found that police officers were sometimes unaware (or claimed to be unaware) that the detainee should be allowed to exercise these rights from the moment of arrest or immediately on arrival at a police station. The delegation noted that "*some police officers spoken to asserted that a person brought in for interrogation could not benefit from the right of notification of custody until such time as he had been charged with a criminal offence. The delegation's impression was that the police enjoyed a wide margin of discretion in evaluating whether and how to enable detained persons to notify someone of their detention*".<sup>42</sup> The CPT further noted that in practice "*some police officers spoken to by the delegation asserted that a person is entitled to exercise his right of access to a lawyer only after he has been charged, or referred to a prosecutor or an investigating judge*".<sup>43</sup>

This observation challenges the assertion of the Ministry of Public Order that the right of detainees to communicate with a lawyer of their choice "*... is exercised immediately*

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<sup>40</sup>In December 2001 the NCHR, commenting on the text of the fourth periodic report of Greece to the Committee against Torture, urged that the report specify whether these bulletins have been posted up in places where foreign nationals are detained and whether they have in practice been used by detainees (*Report 2001*, p.233).

<sup>41</sup>GHM/MRG-G on 23 August 2001.

<sup>42</sup>CPT/Inf (2001)18, paragraph 81.

<sup>43</sup>*ibid.*, paragraph 85.

*after their being brought before the relevant police authority. This means that as soon as the detainees or aliens arrested with a view to expulsion are brought to the police station (i.e. a few minutes after their arrest) they are given the opportunity to exercise the right described above".*<sup>44</sup>

Despite this claim, lawyers and NGOs have continued to observe that police frequently violate the rights of detainees following arrest and in police custody. Further confirmation is provided by the CPT which during its visit to Greece in September 2001 reportedly found that police delay granting detainees their right to notify relatives, their right to prompt information about their rights and their right to prompt access to lawyers and medical care.<sup>45</sup>

While the role of senior staff at police stations in ensuring the implementation of detainees' rights is clearly crucial, prosecutors are also required to supervise the work of police. Under the Code of Criminal Procedure police officers who are carrying out a preliminary inquiry or investigation are subject to the instructions and supervision of the prosecutor, who is entitled to attend interrogations in person or by deputy, and to have access to all the documents in the case file.<sup>46</sup> In practice, however, it appears that police interrogations are rarely attended by a prosecutor. The Ministry of Public Order, in a response to the CPT, pointed out that it was not possible for prosecutors, given their limited numbers, to attend all interrogations.<sup>47</sup>

To this practical obstacle the CPT proposed a simple remedy: *"...regular and unannounced visits to police detention facilities by public prosecutors can make a significant contribution to preventing torture and ill-treatment. Such visits should be seen as an intrinsic part of their duty to control and direct the work of the police in criminal proceedings."*<sup>48</sup>

The CPT further explicitly recommended that a code of conduct for interrogations by police be drawn up.<sup>49</sup> This recommendation was initially rejected by the Ministry of Public Order, which argued that existing legislation regarding the treatment of detainees, directives issued by the Ministry and the Public Prosecutor of the Supreme Court concerning the strict implementation of these provisions, as well as a manual on police behaviour and ethics that was being drafted, provided sufficient safeguards.<sup>50</sup> Nonetheless, in early 2002 it was reported that a code of conduct for interrogations had been drafted.

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<sup>44</sup> *ibid.*, paragraph 84.

<sup>45</sup> *Eleftherotypia*, 23 June 2002.

<sup>46</sup> Articles 33(1), 243 (2) and 279 (1)CCP.

<sup>47</sup> CPT/Inf (2001) 19, p.17 and p. 35.

<sup>48</sup> CPT/Inf (2001)18 paragraph 18.

<sup>49</sup> *ibid.*, paragraph 93.

<sup>50</sup> CPT/Inf (2001)19, pp.81- 82.

## **B.4. ROMA AND IMMIGRANTS<sup>51</sup>**

As has already been noted, many observers, including IGOs monitoring Greece's implementation of its obligations under international human rights treaties, have expressed concern that certain groups are particularly exposed, by virtue of their race or ethnic origin, to police ill-treatment in various forms. For example, the ECRI has observed:

*“There have been consistent reports that Roma/Gypsies, Albanians and other immigrants are frequently victims of misbehaviour on the part of the police in Greece. In particular, Roma/Gypsies are often reported to be victims of excessive use of force -- in some cases resulting in death -- ill-treatment and verbal abuse on the part of the police. Discriminatory checks involving members of these groups are widespread. In most cases there is reported to be little investigation of these cases, and little transparency on the results of these investigations. Although most of these incidents do not generally result in a complaint being filed by the victim, when charges have been pressed the victims have reportedly in some cases been subjected to pressure to drop such charges. ECRI stresses the urgent need for the improvement of the response of the internal and external control mechanisms to the complaints of misbehaviour vis à vis members of minority groups on the part of the police.”<sup>52</sup>*

### **B.4.1. Roma**

#### **Background**

Roma in Greece are variously estimated to number between 120,000 and 350,000; they are effectively Greece's largest traditional minority, although not recognized as one. Predominantly Christian Orthodox, most Roma were stateless, with the status of “aliens of Gypsy descent”, until the late 1970s when they were granted citizenship. The exceptions were Muslim Roma in Western Thrace, who acquired Greek citizenship in the 1930s. The Roma population also includes Roma who have come to Greece in recent years from Albania, former Yugoslavia and other East European countries. Almost all Roma are sedentary and it has been estimated that about half of the Roma population are relatively well integrated into Greek society. Nonetheless there are many Roma communities which are destitute and marginalized, beset by the problems also experienced by Roma in other countries: squalid housing and living conditions, poor health, illiteracy, discrimination and high unemployment, and the associated crime levels which such circumstances tend to generate. These conditions

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<sup>51</sup>The use of the term “immigrant” in this report should be taken to extend to persons who are refugees or asylum-seekers, regardless of whether they have taken formal steps to assert their status as refugees. It follows, therefore, that in addition to applicable human rights standards, some immigrants might also be entitled to enjoy protection under the UN Convention relating to the Status of Refugees, to which Greece is a party. This would include protection against *refoulement*, that is, forcible return to a situation where the individual would face persecution in terms of the Refugee Convention.

<sup>52</sup>ECRI, op.cit.

are particularly evident in the Romani shanty settlements or encampments scattered throughout Greece.<sup>53</sup>

Official attitudes to such communities are reflected in a joint decision of the Ministers of Internal Affairs and Health of 1983 concerning “Sanitary Provision for the organized settlement of itinerant nomads” which states (Article 3.1 and 3.3.): “*The lands for the organized encampments of itinerant nomads which are to be designated, in accordance with Article 2 of the present decision, must be outside inhabited areas and at a good distance from the approved urban plan or the last consecutive houses ... Settlement is not permitted near archaeological sites, beaches, places of natural beauty, points visible from main roads or in areas where they might affect public health (sources of drinking water, etc.)*.”<sup>54</sup> In practice, this decision has also been applied to secure the forcible eviction of sedentary Roma. After visiting several settlements in the Greater Athens area in June 2001, Josephine Verspaget, Chair of the Council of Europe Specialist Group on Roma/Gypsies, condemned the deliberate isolation of Roma communities. She described the settlement at Aspropyrgos as “*one of the worst places I have ever visited in my life -- and I have been to many refugee camps in Africa and Asia. It is a shame that Roma live in such conditions in the midst of a garbage dump: no water, no electricity, bare-foot children with skin diseases*”.<sup>55</sup>

The ECRI has also noted: “*Roma/Gypsies living in camps often face extremely harsh conditions. In recent years, including 1999, some municipal authorities have expelled communities of Roma/Gypsies from camps in which they have lived for many years, in certain cases without providing alternative accommodation ... These expulsions were sometimes accompanied ... by the destruction and arson of houses, and by threats and humiliating treatment by local authorities and municipal employees ...*”<sup>56</sup>

This continues to be true: in the past two years Roma have been evicted, or threatened with eviction, from settlements in a number of districts, including from settlements in the Greater Athens area -- in the latter case on the grounds that the land is required (or allegedly required) for the 2004 Olympic Games.<sup>57</sup>

It should also be recognized, however, that in recent years the Greek Government has instituted two programs to address some of the problems faced by Roma. The first, initiated in 1996, focused on housing and education. The second, the 2001 Comprehensive Plan of Action for the Social Integration of Greek Gypsies, funded by the Third EU Structural Fund as well as domestic sources, is more ambitious. An evaluation of these programs by GHM for the

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<sup>53</sup>For a description of these conditions, see GHM/MRG-G’s *Report on Field Visits to Roma Communities in Greece: August 2001*

([http://www.greekhelsinki.gr/bhr/english/organizations/ghm/report\\_aug\\_2001.rtf](http://www.greekhelsinki.gr/bhr/english/organizations/ghm/report_aug_2001.rtf))

and GHM/MRG-G/IHF *Excerpts on Roma in Greece, Report to the OSCE Implementation Meeting on Human Dimension Issues: Greece* 16 October 2000 (<http://www.greekhelsinki.gr/pdf/ihf-ghm-mrgg-osce-report-on-greece-roma.PDF>).

<sup>54</sup>Decision no. A5/696/25.4-11.5.83

<sup>55</sup>GHM/MRG-G Press release of 13 June 2001

([http://www.greekhelsinki.gr/bhr/english/organizations/ghm/ghm\\_13\\_06\\_01.doc](http://www.greekhelsinki.gr/bhr/english/organizations/ghm/ghm_13_06_01.doc))

<sup>56</sup>ECRI, op.cit.

<sup>57</sup>NCHR *Report 2001*, pp.179 - 197.

ERRC in September 2001 concluded, however, that the 1996 program had failed to achieve many of its aims, as the Greek government itself admitted. The GHM/ERRC evaluation also criticized certain aspects of the second program -- its failure to recognize the Romani community as a minority, the lack of provision for education in Romani, and excessive reliance on the cooperation of local authorities for its success. Further, it disputed the statement by the program's drafters that Roma had not been persecuted by the Greek state or Greek society in general.<sup>58</sup>

As has been noted earlier, police training courses reportedly cover issues such as racial discrimination and the policing of Romani communities. Nonetheless, negative stereotypes of Roma appear to be held even by senior police officers. In May 2001 one such officer, a member of the delegation presenting Greece's report to the UN Committee against Torture, reportedly stated that: "*Roma often reside in isolated camps where drug and weapon trafficking takes place, or other crimes are committed. This fact obliges the police to intervene according to a plan with the use of special forces and depending on the danger that the police personnel faces each time.*"<sup>59</sup> A Committee member queried this generalization as "racial profiling".

### **The ill-treatment of Roma**

The following two incidents are examples of situations in which police are alleged to have physically ill-treated and sometimes racially abused Roma; the first concerns a minor breach of the peace and the second a police raid on a Romani settlement.

#### **A BREACH OF THE PEACE: AGHIA PARASKEVI, GREATER ATHENS**

**Andreas Kalamiotis**, a 21-year-old Rom living in the shanty settlement known as "Pefkakia" in Aghia Paraskevi, on the outskirts of Athens, was arrested in the early hours of 15 June 2001. According to his account, at about 2am police came to his home, where he was listening to music and drinking with friends, and told them to turn off the radio which was disturbing neighbours. About five minutes after the radio was turned off, he heard noise outside and went to the doorway:

*"I was surprised to see about 20 police vans and police officers with guns at the ready. An officer pointed his gun at me and said that he would shoot me. Not yet understanding what exactly had happened, I said to him: 'Shoot!' While still almost inside my home (in the doorway), two or three officers seized me and handcuffed me ... After arresting me, the officers dragged me to the police patrol van, where they pulled me over the bonnet and began to beat me. I think they also used truncheons. Their blows made me fall to the ground and then they began to kick me. At one point they*

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<sup>58</sup> [http://www.errc.org/rr\\_nr2-3\\_2001/noteb5.shtml](http://www.errc.org/rr_nr2-3_2001/noteb5.shtml)

<sup>59</sup> GHM unedited transcript, from tapes provided by the CAT to GHM, of proceedings on 3 May 2001; see also CAT/C/SR.463, 9 May 2001.

*put me in the van, where they again began to beat me. For some reason they took me out of the van, beat me again, and then put me back into the van, where I was once again beaten. In the meantime my children had come to the door, and when they saw the officers beat me they began to cry.”*

Andreas Kalamiotis was then taken to Aghia Paraskevi Police Station, where he alleges that a police officer swore at him insultingly. Later that day he was taken to be photographed to Athens Police Headquarters, where he alleges he was subjected to racist abuse. He was subsequently brought before a prosecutor and charged with resisting arrest, insulting and threatening the police authorities, and was released.<sup>60</sup>

Andreas Kalamiotis was initially reluctant to complain about this incident for fear of police retaliation, but in July 2001 he sent a complaint to the Ombudsman’s Office.<sup>61</sup> On 28 September 2001 the Director of North-East Attica Police Headquarters responded by letter to this complaint. He asserted that after receiving a complaint about loud music a police patrol had gone to Pefkakia and that while there the patrol had summoned reinforcements after hearing gunfire nearby. Andreas Kalamiotis had refused to turn off the radio, and had moreover threatened and insulted police officers and resisted arrest. The letter, referring to Andreas Kalamiotis’ fears of police retaliation, closed as follows: “...we inform you that all those serving in the Greek Police are imbued with a high sense of duty towards the Greek Citizen, abide by the laws and regulations as regards their conduct during the performance of their duties and consequently do not employ methods contrary to the Constitution, Laws, Regulations and Orders of the Police Forces, or indeed to the ideals of a Democracy, as defined in a well-governed State, such as the Greek State”.

In this case, as in the following case, the police authorities did not undertake a Sworn Administrative Inquiry, but limited their investigation to an informal internal inquiry applicable to lesser breaches of discipline. In October 2001, and again in February 2002, the Ombudsman wrote to police headquarters requesting a full Sworn Administrative Inquiry into Andreas Kalamiotis’ allegations but by the end of June 2002 this request had not been fulfilled.

#### **A POLICE RAID ON THE NEA ZOI SETTLEMENT IN ASPROPYRGOS, GREATER ATHENS<sup>62</sup>**

On the morning of 8 January 2002 police raided Nea Zoi, a Romani settlement in Aspropyrgos, some 15 km west of Athens. The raid followed previous raids at this settlement and at other Romani settlements in the area. According to the accounts of inhabitants of Nea Zoi, a large group of police officers approached the settlement with their guns at the ready. The police were accompanied by a judicial official, but allegedly did not produce any arrest or search warrants. They ordered all the Roma out of their shanty-homes, and forced those

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<sup>60</sup>Andreas Kalamiotis has reportedly since been convicted of one or more of these offences and sentenced to imprisonment, but has remained at liberty pending appeal.

<sup>61</sup>

[http://216.239.39.100/search?q=cache:7fe\\_Clnq79cC:www.greekhelsinki.gr/bhr/english/organizations/ghm/letter\\_02\\_07\\_01.doc+Kalamiotis&hl=en&ie=UTF-8](http://216.239.39.100/search?q=cache:7fe_Clnq79cC:www.greekhelsinki.gr/bhr/english/organizations/ghm/letter_02_07_01.doc+Kalamiotis&hl=en&ie=UTF-8)

<sup>62</sup>See [http://www.greekhelsinki.gr/bhr/english/organizations/ghm/ghm\\_28\\_01\\_02.rtf](http://www.greekhelsinki.gr/bhr/english/organizations/ghm/ghm_28_01_02.rtf)

already outside to lie face down on the ground. The police officers searched, apparently indiscriminately, almost all the shanty-homes in the settlement for drugs, while the Roma, assembled outside, were allegedly shouted and sworn at, and subjected to racist abuse. The conduct of police appeared to be deliberately intended to frighten and humiliate. One police officer allegedly pointed his gun at a 13-year-old girl.

**Yannoula Tsakiri**, a 21-year-old resident of the settlement, subsequently alleged that she had been assaulted by police officers. With the aid of GHM she filed a complaint with the Athens prosecuting authorities in which she stated that during the raid a police officer had shouted at a disabled 13-year-old boy to stand up, and then grabbed him by the arms to raise him. She stepped forward to protect the boy, whereupon an officer allegedly violently pushed her away and another kicked her in the back, knocking her to the ground. Yannoula Tsakiri was two and a half months' pregnant at the time, and shortly afterwards began to bleed. The following day she was taken to hospital where she was found to have a partially detached placenta. Three days later she suffered a miscarriage. According to the police authorities, an inquiry into these allegations found no evidence to support her allegations.

It is also alleged that during the raid several other Roma were physically ill-treated by police officers: Pavlos Christodoulouopoulos, aged 22, was kned in the stomach, and Michalis Aristopoulos, another young man, was slapped three times. From the assembled Roma, some 10 to 15 men were detained and taken to Aspropyrgos police station to check whether they had any outstanding traffic fines or other penalties. It is alleged that at the police station police started to beat a third youth, Athanasios Sainis, found to be in possession of a small amount of hashish, when he refused to state from whom he had bought it.

The Roma were reportedly held at Aspropyrgos police station, without food or water, until 8pm, with the exception of five who were charged with possession of drugs and held overnight (the latter were brought food). Before being released they all had their fingerprints registered, and were asked to sign statements they had given, which were allegedly not read back to those who were unable to read.

## **B.4.2. Immigrants**

“In Greece, prior to the dictatorship and even more so during it [1967 to 1974], the main problem affecting individual rights was the persecution of political convictions, and the right to think and express yourself differently. Today, by and large the main problem has to do with being different. We may have solved our political problems; we may have a political dialogue rather than a political annihilation. But in the social sphere the problems are somewhat exacerbated. Over the past 10 years the composition of society has changed, and this has contributed to the eclipsing of certain illusions. We have begun to realize that we are not as homogeneous a society as we once thought, and this has begun to provoke various reactions. The main issue now is what the country will decide to do on the question of aliens [foreign nationals].”<sup>63</sup>

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<sup>63</sup>Professor George Kaminis, Deputy Greek Ombudsman, in an interview published in *Eleftherotypia*, 5 February 2001.

Estimates of the number of immigrants in Greece vary between 700,000 and a million or more, of whom about 600,000 have legal status. Albanians, said to number between 300,000 to 500,000, constitute by far the largest national group. Following the end of communist rule in Albania in 1991, the country's frontiers -- previously effectively sealed -- opened up. Since then, unemployment and insecurity have driven hundreds of thousands of Albanians to seek work in Greece, primarily in agriculture, the services and the building industry. As the largest single group of immigrants, many of whom lack residence and work permits, they have attracted the greatest hostility and tend to be popularly blamed, together with immigrants more generally, for a rise in crime.

Commenting on this situation, the ECRI expressed particular concern “...at the significant amount of anti-foreigner sentiment directed particularly, although not exclusively, towards Albanians, which has paralleled the increase in the number of non-Greeks living in the country in recent years. This negative attitude vis-à-vis Albanians is particularly nourished by a disputable picture of the number of crimes committed by this group of people in Greece. ECRI recognises that this issue is a matter of major controversy and concern and that there are different interpretations of the available data. ECRI is itself concerned, however, lest the negative stereotyping of this group should give the impression that all or most Albanians are criminally-inclined. ...The media appears to play a primordial role in creating such a picture through frequent unbalanced and sensational reports. Public statements by politicians and some representatives of public institutions (notably, the police) have in some cases also contributed to the disputable view of Albanian criminality.”<sup>64</sup>

Whereas Greece is for most Albanians a destination, unauthorized immigrants and asylum-seekers from the Middle East, Asia and Africa tend to regard it as a staging-post on a journey to northern European countries. Many travel to Greece by sea via Turkey in rubber dinghies or are ferried by people-smugglers in the cramped holds of ramshackle boats. Some never reach Greece, but are drowned in passage. Others take a land route, entailing other risks. According to the Greek section of Médecins du Monde, between 1994 and the end of April 2002 fifty five people were killed and 46 wounded by landmines along the Turkish-Greek border.<sup>65</sup>

The Greek authorities have sought to deter these arrivals, primarily by strengthening border policing. In December 2001 Prime Minister Kostas Simitis promised his government would not allow Greece to be “an unfenced vineyard”; he estimated that some 160,000 people had entered Greece illegally in 2001, and said that about 10,000 who had arrived by sea had been forcibly expelled.<sup>66</sup>

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<sup>64</sup>ECRI, op.cit.

<sup>65</sup>In March 2002 Greece ratified the Ottawa Convention banning the use of antipersonnel land-mines, while the Turkish Foreign Affairs Ministry, also in March 2002, stated that Turkey had decided to accede to the Convention. According to *Eleftherotypia* of 28 April 2002 neither country had yet started to remove and destroy the land-mines in their border regions.

<sup>66</sup>*Reuters* and *Eleftherotypia*, 5 December 2001.

Greece has repeatedly called on the Turkish government to clamp down on people-smuggling. In November 2001 the government announced that a Protocol had been signed by the two countries which allowed Greece to return to Turkey immigrants from third countries arriving via Turkey.<sup>67</sup> Despite a statement by the Ministers of Foreign Affairs and Public Order that the Protocol would not be applied to asylum-seekers, the office of the United Nations High Commissioner for Refugees (UNHCR) in Greece expressed concern that the Protocol did not refer to the 1951 Geneva Convention relating to the Status of Refugees (ratified by Greece in 1959), and did not specify whether it applied to asylum-seekers. The concern proved justified, as was shown in the following month when the Greek authorities reportedly prevented at least three ships carrying immigrants from entering Greek waters, and turned them over to the Turkish authorities, thus in effect denying those on board the opportunity to apply for asylum.

Measures have also been taken to expel unauthorized immigrants who have succeeded in entering the country. According to published figures, in the first nine months of 2001 some 205,000 unauthorized immigrants were arrested for illegal entry or residence in Greece.<sup>68</sup> Foreigners arrested following illegal entry may be charged and convicted for this offence, which carries a minimum sentence of three months' imprisonment and a fine. In such cases courts normally suspend the prison sentence and replace it with an order for the defendant's immediate (judicial) deportation.<sup>69</sup> However, in practice most immigrants arrested following illegal entry are not prosecuted, but are simply detained pending administrative deportation, together with unauthorized immigrants arrested on the street or at work. Prior to the introduction of Law 2910 (the Law on Aliens) in June 2001 there was no limit on the length of administrative detention, and when prompt deportation was not possible (for reasons such as the detainee's lack of documentation), detainees were often held for prolonged periods -- in some cases for up to a year. At present, detention pending administrative deportation is limited to a maximum of three months. However, the conditions of detention in some of the holding centres or police stations where foreign nationals are detained pending administrative deportation have been widely condemned by IGOs, NGOs and the Ombudsman as amounting to inhuman and degrading treatment, prohibited by international human rights law.

In 1997 the authorities initiated a program of legalization for unauthorized immigrants. However, the lengthy procedures involved and the lack of adequate staff, premises and equipment to deal with immigrants' applications, as well as bureaucratic disorder and corruption, have been criticized. A second such program started in 2001, with similar problems. The Ombudsman's Office in December 2001 reported a "complete lack of coordination and collaboration of the forums involved in the procedure for legalizing work and residence in Greece."<sup>70</sup>

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<sup>67</sup> The Protocol is reciprocal, although in practice the flow of immigrants is from east to west.

<sup>68</sup> *Eleftherotypia*, 12 November 2001.

<sup>69</sup> Under Article 99 (2) CC, a court which has imposed a sentence of less than five years' imprisonment on a foreign national (who has not been granted political asylum), may order the indefinite suspension of the sentence and the convicted person's immediate deportation.

<sup>70</sup> [http://www.synigoros.gr/reports/n\\_2910\\_aft\\_efa.doc](http://www.synigoros.gr/reports/n_2910_aft_efa.doc)  
[http://www.synigoros.gr/reports/n\\_2910\\_teliko.doc](http://www.synigoros.gr/reports/n_2910_teliko.doc)

#### **B.4.2.1. The ill-treatment of Albanians**

In past years thousands of Albanian citizens who entered Greece clandestinely were arrested and forcibly returned (summarily expelled) to Albania on the basis of a “Re-admission clause” under a Police Cooperation Agreement between Greece and Albania. According to a press report, at one border-point in one week in June 2001, some 2,500 unauthorized Albanian immigrants were forcibly returned to Albania, and according to police headquarters in Korça over 30,000 were returned in the first six months of 2001.<sup>71</sup> More recently, as a result of increased patrolling by Greek and Albanian border forces, the numbers have reportedly significantly diminished.

There have been repeated complaints that Albanians detained by Greek police and military forces operating in border districts have been beaten and otherwise ill-treated. In August 2001 it was reported that at a meeting between police chiefs from Devolli (Albania) and Florina (Greece) the Albanian side had again raised this issue, and that the Greek police had agreed to take appropriate measures against police officers responsible for ill-treatment. However, complaints continued. In November 2001, for example, six Albanians from Durrës and Elbasan districts who had been arrested near Florina after clandestinely crossing the border alleged that Greek police officers had beaten them and taken their money.<sup>72</sup>

Similar complaints of ill-treatment have been made by Albanians who have succeeded in entering Greece and finding employment, although without the required work and residence permits, and who have subsequently been arrested and forcibly returned to Albania in the course of what are commonly referred to as “sweep” operations. In February 2001 the Deputy Ombudsman for Human Rights criticized the summary expulsion of Albanians in these circumstances as illegal and humiliating, commenting that: “*When an immigrant has settled in a place, there is a deportation procedure that is regulated by law [a procedure which provides for detention in custody and the right of appeal]. Summary expulsion is illegal.*”<sup>73</sup>

Other incidents of police ill-treatment during arrest and in custody have been alleged by Albanians living and working legally in Greece.

An encouraging development, however, was reported in April 2002, when the Greek Ombudsman informed his visiting Albanian counterpart that the Ombudsman’s Office had prepared a form in Albanian for distribution to Albanian immigrants in Greece so that those with complaints could address themselves to the Ombudsman.<sup>74</sup>

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[http://www.synigoros.gr/reports/n\\_2910\\_diav\\_aft.doc](http://www.synigoros.gr/reports/n_2910_diav_aft.doc)

<sup>71</sup> *Albanian Telegraphic Agency (ATA)*, 16 June 2001

<sup>72</sup> *Shekulli*, Tirana, 5 November 2001

<sup>73</sup> Professor George Kaminis, Deputy Greek Ombudsman for Human Rights, in an interview published in *Eleftherotypia*, 5 February 2001.

<sup>74</sup> *Koha Jonë*, Tirana, 21 April 2002.

### AT THE BORDER

The following is an example of an incident in which Albanians seeking to enter Greece clandestinely are alleged to have been ill-treated by Greek border forces.

On the night of 13 to 14 June 2001 Greek soldiers reportedly arrested some 30 Albanian men who were attempting to cross into Greece. The men were then handed over to police at Krystalopigi police station and forcibly returned within hours to Albania. On their return the Albanians complained that they had been severely beaten following arrest, and four of them were urgently admitted with severe bruising to hospital in Bilisht (Albania). They also complained that their money as well as other valuables had been taken from them. Albanian and Greek officials subsequently held meetings, which reportedly resulted in the return of the money and an undertaking by Greek officials to start criminal proceedings against two (possibly three) soldiers.

One of those who made a written deposition at Korça Prosecutor's Office was **Astrit Lleshi**, from Rukaj village, Burrel district. In this statement he alleged that following his arrest, soldiers took his money and "*began to kick us and beat us with rifle butts; they took the food we had brought with us and threw it to dogs*". Another was **Kastriot Rrapi**, from Arëz village, Mirdita district. In his complaint he wrote: "*At the frontier, men of the Greek border forces came towards us. They ordered us to lie down; three of my friends ran away, but they caught me and began to kick me and beat me with rifle butts about my head and body. Afterwards they took me to the barracks, and took the money I had on me ... they held me for about an hour. At 1am on 14 June 2001 they brought me to the Albanian customs post and we immediately went to the [Albanian] police and told them what had happened. The police took the necessary measures and brought me to hospital.*"

A third, **Dashmir Troshku**, from Fier district, wrote that after arrest, he and three friends were taken by soldiers to barracks where they were held with others who had been arrested -- some 30 men in all. "*They collected all our bags of food and took away our money ... Then they began to beat us with rifle butts and kick us. They beat us from midnight [of 13 June] to 1am on 14 June, when they brought us to the customs post.*" A forensic medical report recorded that Dashmir Troshku was examined in Bilisht on 14 June 2001. The report noted that he complained of stomach pains and had bruising on his stomach, back and shoulders, and concluded that these injuries had been caused by beating with a hard instrument.<sup>75</sup>

### A "SWEEP" OPERATION

On 9 February 2001 **Blerina Meçe**, a young woman aged 19 from Tepelena, was arrested in the course of a "sweep" operation in Athens. The next day she and a group of other Albanian immigrant workers without work and residence permits were forcibly returned by bus to Albania. During the journey, a police officer who was accompanying the bus allegedly physically ill-treated and verbally abused Blerina Meçe. According to her written and signed

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<sup>75</sup> Copies of this medical forensic report and of statements by Astrit Lleshi, Kastriot Rrapi and Dashmir Troshku made available to AI.

statement, dated 10 February 2001: “When we arrived at Kakavijë [a police officer] told me to collect all the rubbish in the bus and sarcastically told me to take the empty bottles to Albania because 'you Albanians are empty bottles'. I refused and then the taller one [police officer] hit me. He asked me where I was from. I said I was from Tepelena and he told me that 'Albania is half ours'... and I said that Tepelena belonged to Albania. Finally he banged my head against the bus window.”<sup>76</sup>

When another passenger, Luftim Krosi, a young man from Tirana, protested, the police officer driving the bus allegedly kicked him and took his mobile phone. At the Kakavijë border point Blerina Meçe and Luftim Krosi informed Albanian police of what had happened. As a result the bus was stopped as it was returning to Greece. The two police officers were identified by their victims at the Greek border post and the mobile phone was returned to its owner. According to Albanian press reports, criminal proceedings were started against the two police officers.<sup>77</sup>

#### **ARJAN HODI**

On 24 March 2001 a group of local Greek students and young Albanian immigrant workers held a demonstration in Mytilene, the capital of Lesbos island, to protest against certain local bars and night-clubs which were allegedly refusing entry to Albanians as well as to (Greek) students and conscripts.

Three days later two police officers detained Arjan Hodi, aged 24, an Albanian working legally at a petrol station in Mytilene. He had previously reported to police that he and some of his compatriots had been denied entry to a night-club because of their nationality. The two officers took him to Mytilene police station, where police officer D. allegedly beat him with a truncheon. Officer D. reportedly informed Arjan Hodi that he was related to the doorman at a club and threatened to jail him and have him sent back to Albania if he continued to protest or demonstrate. Arjan Hodi was released an hour later, but was so severely injured that on his way home he lost consciousness, and had to be admitted to hospital.

On 29 March criminal proceedings on charges of “Acts of torture and other offences against human dignity” under Article 137A CC were started against officer D. Other unnamed police officers who were present when Arjan Hodi was being beaten were also reportedly charged.<sup>78</sup> Arjan Hodi later withdrew a criminal complaint he had filed against police officer D., after the latter apologized and paid for his hospital fees. However, the withdrawal of the complaint did not halt criminal proceedings in this case, although the investigation appears to have stagnated. In October 2001 the prosecuting authorities in Mytilene stated that officer D. would probably not testify to the investigating judge before early 2002, due to many other pending cases.

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<sup>76</sup> A copy of this statement obtained from the Albanian Human Rights Group (AHRG) by AI.

<sup>77</sup> *Koha Jonë*, 13 February 2001. In July 2002 GHM wrote to the Greek police authorities requesting information about the investigation of this case and that of Astrit Lleshi, Kastriot Rrapi and Dashamir Troshku.

<sup>78</sup> *Eleftherotypia*, 30 March 2001.

In November 2001 it was reported that an administrative inquiry had concluded that officer D. and another officer had unlawfully arrested and tortured Arjan Hodi. The inquiry referred the case to a Disciplinary Board, and recommended D.'s dismissal from service, and a lesser sanction for his colleague. The same press report noted that officer D. had admitted in a letter to the prosecuting authorities that he had ill-treated Arjan Hodi.<sup>79</sup>

However, in the meantime, in the early hours of 30 July 2001 a fight broke out between a group of Albanians, among them Arjan Hodi, and the proprietor and employees of a bar, apparently arising out of a dispute about the access of Albanians to the bar. Five or six Greek men were wounded, one of them seriously. Only three days later, on 2 August, Arjan Hodi and three other Albanians were tried in Mytilene on charges of being members of a gang, possessing and using weapons, making threats and causing dangerous bodily injuries. His three co-defendants were reportedly tried without a defence lawyer since they were unable to provide documented proof that they lacked sufficient funds to hire a lawyer and so could not claim legal aid. The four were convicted, and sentenced to a suspended sentence of 37 months' imprisonment each, and their immediate deportation from Greece.

Furious crowds reportedly tried to mob the four defendants on their way to and from the court room and angry local citizens appeared on local television brandishing guns and making threatening statements about Albanians. A "popular meeting" held in the nearby village of Loutra, where reportedly most of the Greek victims (but only one of the accused Albanians) lived, issued an ultimatum that all Albanians in the village, many employed in agriculture, should leave by 5 August. By that date some 150 Albanians and 15 other foreign workers, including families with children who had been born in the village, had reportedly fled. There was little immediate official reaction to this mass "expulsion". However, on 8 August Mytilene City Council reportedly declared that any legal foreign worker could return to the island. Shortly afterwards, the Mytilene prosecuting authorities ordered a preliminary inquiry into the events in Loutra.<sup>80</sup> It appears that no prosecutions have since been reported in connection with the latter events.

The slow progress of the judicial investigation into the torture and ill-treatment of Arjan Hodi, and the lack of prompt action by the prosecuting authorities in response to the threats made against Albanian inhabitants of Loutra, contrast sharply with the speed with which Arjan Hodi and his three co-defendants were tried, convicted and deported from Greece.

#### **B. 4. 2. 2. The ill-treatment of other immigrants and asylum-seekers**

There have been a number of allegations that foreign nationals have been ill-treated by police when they resisted forcible deportation, or while being held in police cells or in designated detention centres pending judicial or administrative deportation. Most detainees held in these circumstances have only very limited contacts with the outside world, and the following

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<sup>79</sup> *Eleftherotypia*, 21 November 2001.

<sup>80</sup> Anna Karamanou, a member of the European Parliament representing Greece's ruling party PASOK (Pan-Hellenic Socialist Movement), had called on the Mytilene prosecuting authorities to take action to protect Albanian immigrants.

complaints came to light through the work of NGOs monitoring the detention conditions and the treatment of detainees held pending deportation. As previously noted Greece, as a party to the 1951 Geneva Convention relating to the Status of Refugees, is bound to grant those who wish to do so the right to seek asylum and to enjoy protection pending determination, in a fair procedure, of their claim to refugee status.

### **JOSEPH EMEKA OKEKE**

In February 2002 police arrested Joseph Emeka Okeke, a Nigerian, in the Greater Athens area, after an identity check revealed that he was subject to a judicial deportation order. He had, however, reportedly previously obtained legal residence in Greece and a request he had filed for the lifting of the deportation order was at the time pending. After his arrest he was detained in Hellenikon New Holding Centre (at the former Athens airport).

At 4am on 25 June he was taken out of his cell by three police officers from the Aliens Directorate of Pallini (northeast Athens), who allegedly told him that he was due to be released. Suspecting that he was about to be deported, he refused to follow them. According to his subsequent statement, they then “*grabbed me and started to kick me, pulling me and beating me with a large black rectangular object that had two extensions like claws. Every time they touched me it was as if electricity was piercing my body*”. Another detainee telephoned Joseph Emeka Okeke’s wife who arrived shortly afterwards at the centre, but was not allowed to see her husband. Instead she was allegedly pushed out of the building and accused of wanting to attract publicity and disgrace the Greek police.

In the meantime Joseph Emeka Okeke was put into a car, handcuffed and his feet bound with adhesive tape. He alleges that police also attempted to gag him by taping his mouth. He was taken to the Venizelos airport to be deported on an ALITALIA flight. However, flight staff reportedly refused to allow him to be put on the plane when they saw he was being ill-treated. Joseph Emeka Okeke was later transferred to Pallini Aliens Directorate. “*There I was told to face the wall and kneel down. Then a police officer came up behind me and kicked me hard in the ribs. They kept on beating me until another officer arrived and told them to stop. Then they took me to the detention centre at the Attica General Police Headquarters.*” Joseph Emeka Okeke was subsequently charged with “resisting authority” and was due to go on trial on 10 July 2002.

The above account was given by Joseph Emeka Okeke to GHM advocates on 26 June 2002, who observed “deep scratches on the right arm, injuries on both wrists and a cut on the left side of the lower lip”. Joseph Emeka Okeke also provided a drawing of the instrument, resembling a stun-gun, which he alleges was used to give him electric shocks. Following an urgent request by GHM, the Minister of Public Order the next day (27 June) ordered an administrative inquiry to be carried out and Joseph Emeka Okeke was examined by two forensic medical experts. On 28 June he filed a criminal complaint. However, the same day he informed a lawyer engaged by GHM that between 10pm and 4am on the night of 27 to 28 June he was interrogated by three plainclothes police officers who allegedly threatened him that he would regret having complained. An interpreter was present during his interrogation, but his request for a lawyer was refused, and he was obliged to sign a document in Greek

which he could not read. Another detainee at Hellenikon New Holding Centre, Rotimi Alakia, an asylum-seeker from Sierra Leone, who witnessed the alleged torture of Joseph Emeka Okeke on 25 June, informed GHM on 28 June that police officers at the centre had threatened him and told him not to testify to the administrative inquiry or in court.<sup>81</sup>

The alleged use of an electro-shock weapon in this case is deeply disturbing and appeared to gain additional credibility following the publication of another such allegation in August 2002.<sup>82</sup> This is a practice which has not been documented in Greece for almost a decade. The CPT's report on its visit to Greece in 1993 noted that two detainees at Athens Police Headquarters alleged that they had been tortured with electric shocks: "Their descriptions of the device - black, shaped like an electric razor, with two poles at one end - were concordant." During the same visit, five other detainees complained to the CPT that they had been tortured with electric shocks at Thessaloniki Police Headquarters, where the CPT found in a locker "a 29cm long black plastic rod equipped with two small electrodes at one end. The pressing of a button in the middle of the rod resulted in a spark passing between the electrodes".<sup>83</sup>

With regard to Joseph Emeka Okeke's other allegations, it should be noted that the CPT has also declared that it is "*entirely unacceptable for [foreigners being deported] to be physically assaulted by police officers as a form of persuasion to board a means of transport or as punishment for not having done so ... the Committee must emphasize that to gag a person is a highly dangerous measure.*"<sup>84</sup>

#### **ALLEGATIONS OF ILL-TREATMENT MADE BY UNAUTHORIZED IMMIGRANTS HELD AT HELLENIKON HOLDING CENTRE**

Between 20 August and 6 September 2001 GHM interviewed 22 foreign nationals, from Iraq, Bangladesh, Sri Lanka, Sierra Leone and Kenya, held at Hellenikon Holding Centre pending deportation. Several alleged that they had been slapped, punched, kicked or beaten following arrest, when they asked for information, or after they refused to board a plane to be deported.<sup>85</sup> One of those who made such allegations was Rangasamy Nadaraja.

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<sup>81</sup> [http://www.greekhelsinki.gr/bhr/english/organizations/ghm/ghm\\_27\\_06\\_02.rtf](http://www.greekhelsinki.gr/bhr/english/organizations/ghm/ghm_27_06_02.rtf) and [http://www.greekhelsinki.gr/bhr/english/organizations/ghm/ghm\\_28\\_06\\_02.rtf](http://www.greekhelsinki.gr/bhr/english/organizations/ghm/ghm_28_06_02.rtf)

<sup>82</sup> A Greek military conscript, Yannis Papakostas, who was detained on 14 August 2002 for driving a motorcycle without license, alleged that a plainclothes police officer at Aspropyrgos police station subjected him to electric shocks on his shoulders and genitals (*Avghi* and *Eleftherotypia*, 16 August 2002). The police authorities instituted an administrative inquiry into this complaint.

<sup>83</sup> CPT/Inf (94)20, paragraphs 20, 21 and 22.

<sup>84</sup> CPT/Inf (98)9, published on 19 May 1998, paragraph 11 (commenting on allegations the CPT had encountered during its visit to Spain in 1997 that foreigners expelled from Spain had been beaten and gagged with adhesive tape).

<sup>85</sup> GHM: *Illegal and inhuman detention at the Hellenikon Holding Center (old Athens airport): August - September 2001* (press releases, detainee statements, and description of detention conditions) at: [http://www.greekhelsinki.gr/bhr/english/special\\_issues/hellenikon.html](http://www.greekhelsinki.gr/bhr/english/special_issues/hellenikon.html)

**Rangasamy Nadaraja**, a Tamil from Sri Lanka, was arrested on 12 June 2001 at Venizelos airport in Athens in transit from Bangkok to France; he was carrying a forged passport. In an interview with GHM at Hellenikon Holding Centre on 3 September 2001 he alleged that in Sri Lanka he had been tortured by government officials. He stated that following his arrest in Greece he was taken in handcuffs to the airport police station where he was given some documents in Greek to sign. When he hesitated, the police officers allegedly urged him: “Sign, sign, no deport”. Fearing further ill-treatment, he duly signed. *“However, to this day I am ignorant of the content of the documents I signed as well as any rights I might have been entitled to under the Greek legal system.”*

According to his account, on 15 June 2001 he was brought before a judge, who sentenced him to four months’ imprisonment or a fine (which he was unable to pay), at a trial where he had no legal representation and an interpreter who spoke English to him, a language which he understands only poorly. At the trial *“...the only thing I managed to state is that I am a refugee, since no questions were asked of me about my status or future interests”*. He was then taken to the airport police holding cells where he was detained for two months, under the impression that he would be released once he had served his sentence. *“I was never informed about a deportation order and believed that I had not signed one, which gave me a sense of security since the worst fate for me would be to be sent back to Sri Lanka.”* On 12 July a Sri Lankan passport was brought to him; he signed it, being unaware that this was part of the procedure for his deportation. The following day he was taken to the airport. When he realized he was being deported, he refused to board the plane. *“I fell down, and with my hands clasped over my head, I begged not to be deported. At that moment, one of the guards who was escorting me started kicking me all over and I was being shouted at in angry Greek, pushed and shoved by the guards.”* He continued to refuse to board the plane, and after alleged “rough handling” was returned to the airport police station cells until 9 August 2001, when he was transferred to the Hellenikon Holding Centre. He was released in mid-September on the expiry of the maximum period -- three months -- allowed for detention pending deportation.<sup>86</sup>

#### UNAUTHORIZED IMMIGRANTS AND ASYLUM-SEEKERS ILL-TREATED ON CRETE

On 30 May 2001 a Turkish fishing boat was towed into Souda harbour in Crete by the Coastal Rescue Service which had earlier received a call for help from the boat which was reportedly en route from Turkey to Italy. On board were 164 foreign nationals, mostly Kurds from Turkey, Iraq and Iran, as well as some Turks, Afghans, Pakistanis, Eritreans and Ethiopians. After they disembarked, four Turks were arrested on charges of people-smuggling.

The group of unauthorized immigrants and asylum-seekers, which included women and children, was held for several days in the old Academy of the Merchant Navy at Souda, Hania. It was here that coastguards in charge of the group allegedly assaulted and beat many of the men.

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[http://www.greekhelsinki.gr/bhr/english/special\\_issues/hellenikon/Statement%20of%20RANGASAMY%20NADARAJA.rtf](http://www.greekhelsinki.gr/bhr/english/special_issues/hellenikon/Statement%20of%20RANGASAMY%20NADARAJA.rtf)

On 6 June local doctors examined members of the group who alleged that they had been beaten. The doctors observed injuries on at least 16 of them that were apparently consistent with their allegations. The following 10 persons were among the most seriously injured (the first five were referred to hospital for further investigation and treatment).<sup>87</sup>

- Ardal[alternative spelling Erdan]Akgun, aged 17: *extensive inflammation on the right side of the chest at the back. Complains also of injury to the right wrist joint.*
- Ozgan Eshik [Isik Ozcan], aged 17: *slight swelling of the right elbow and inability to bend or rotate the elbow.*
- Hanafi Alton [Altun Hanifi], aged 36: *a very large bruise laterally, on the right side of the chest, at the level of the 7th to the 10th thoracic vertebrae.*
- Bülent Sahin, aged 27: *complains of acute deafness of the right ear;[examination shows] rupture of the right ear-drum.*
- Halil Gilgil, aged 20: *complains of abdominal pain following beating; [examination shows] diffuse tenderness of the abdomen and spasm of the abdominal wall on the left side.*
- Farhad Damir, aged 18: *a large haematoma in the middle of the back of his left thigh.*
- Gehad Korlalg, aged 26: *two longitudinal oblique bruises, one 10 cm long, at the level of the 3rd thoracic vertebra, the other 40 cm long, at the level of the 6th thoracic vertebra and a round bruise at the level of the 2nd lumbar vertebra. Also complains of head injury.*
- Khalid Bagish, aged 29: *a bruise on the right abdomen and two longitudinal bruises around the armpit at the level of the 4th to 5th rib.*
- Mehmet Nuri Aktay, aged 29: *two longitudinal bruises on the left side of the upper part of his back. Complains also of pain when moving his left arm.*
- Rahme[Rahmi] Tunc, aged 29: *four longitudinal bruises on his back, from the level of the 3rd thoracic vertebra to the 3rd lumbar vertebra.*

On 7 June the Greek Section of Médecins du Monde (MDM) publicized its concerns about the treatment and the conditions of detention of these asylum-seekers and immigrants. The following day the Chief of the Port Authority ordered an administrative inquiry.

The group was shortly afterwards moved to the premises of the old airport of Hania. On 10 June they were visited there by two MDM doctors, who examined the injured men, took photographs of their injuries and forwarded them to the Port Authority. MDM reported that the group was being detained behind bars in a room of 100-150 square metres, with only three toilets, and no possibility of exercise in the open. Women and children were held together with men and conditions were further aggravated by the high summer temperatures. MDM also criticized delays in interviewing asylum-seekers and offered to provide accommodation for the women and children. By mid-June all members of the group were reported to have been transferred to Athens.

Following publicity about these events the Greek authorities made various statements tending to minimize or discount their gravity. The Chief of the Port Authority reportedly

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<sup>87</sup>Injuries as recorded in the patients' register of the Physicians' Union of the National Health Service, Hania.

claimed that the men had been injured while trying to escape, or during a quarrel.<sup>88</sup> On 20 August 2001 the Ministry of the Merchant Navy stated that the administrative inquiry had been undertaken to establish whether staff of the Port Authority had been responsible for “omissions or irregular acts” during the detention of the group, and that on the basis of its findings disciplinary proceedings had been started against one ranking officer and five coastguards for the “irregular performance” of their duties.<sup>89</sup> In reality, however, the Chief of the Port Authority had concluded that the officer had used violence “in a non-preventative manner” and had concealed the incident, while five coastguards were guilty of physical or emotional abuse, homophobic denigration, and inflicting a “military-style punishment” (forcing one of the detainees to hop like a rabbit). In November 2001 it was reported that the officer and one coastguard had each been punished with 20 days’ confinement to barracks, and the other coastguards with 30 to 50 days’ jail.

On 4 October 2001 N.Z., a member of the group who had been beaten by coastguards, reportedly stated at a press conference: “They took me to the toilet. A coastguard .... took out his truncheon and beat me on my shoulders and hands. Pulling at my trousers, he tried to rape me with the truncheon. I resisted. I fell down and he kicked me to make me stand up. He continued. I was in great pain.”<sup>90</sup> He indicated that fellow-members of the group had convinced him that he should speak out about this incident, although initially, out of a sense of shame, he had been reluctant to do so. Later in the year he gave a statement to his lawyer in which he declared that the coastguard had attempted to rape him with a truncheon, but in July 2002 he testified to an investigating judge that the coastguard had in fact raped him with a truncheon.

In October 2001 the prosecutor for the Naval Court of Hania ordered criminal proceedings to be started against the five coastguards on charges of offences against human dignity under Article 137A CC. However, the investigation stagnated. Finally, in May 2002, following a public protest by GHM, an investigating judge of the Naval Court of Hania summoned three men (one of them N.Z.), who had joined proceedings as civil claimants, to testify as witnesses. All three had earlier applied for asylum. On 26 June 2002 they travelled from Athens to Hania, together with a lawyer engaged on their behalf by GHM. However, on arrival they found that, despite previous assurances, a Turkish-speaking court interpreter was not available. They consequently did not testify, although the investigating judge argued that the questions would be “simple and they can reply with whatever Greek they know”.<sup>91</sup> They subsequently testified to an investigating judge in Piraeus on 5 July 2002.

## **B.5. THE ILL-TREATMENT OF CHILDREN IN CUSTODY**

The ill-treatment of children in custody is illustrated by the three cases which follow. The first concerns two boys who are alleged to have been subjected to beatings and sexual threats

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<sup>88</sup> *Avghi*, 14 August 2001.

<sup>89</sup> *Avghi*, 22 August 2001.

<sup>90</sup> *Eleftherotypia*, 5 October 2001.

<sup>91</sup> As stated in a letter from GHM of 26 June 2002 to the Prosecutors of the Supreme Court and the Review Court.

while detained at a police station in 1994. Although two police officers were in 1999 convicted of their ill-treatment, they were subsequently acquitted on appeal. The second concerns a young Albanian, an unauthorized immigrant, who was severely injured by police following his arrest in the course of a “sweep” operation in February 2001. Lastly, a young Rom complained that he was slapped and punched by police officers while he was detained and interrogated in police custody on the island of Cephalonia in August 2001.

It is difficult to assess whether the ill-treatment of children in custody is a common occurrence. It is, however, perhaps significant that in a survey carried out between November 1997 and March 1998 of 100 young men and boys aged between 14 and 24 detained in Korydallos and Kassaveteia Volou prisons (a high proportion of whom were Albanians and Roma), 25 alleged that they had been beaten by police officers.<sup>92</sup>

Greece ratified the UN Convention on the Rights of the Child in 1993. The Convention forbids torture or cruel, inhuman and degrading treatment of children and provides that deprivation of liberty shall be used only as a last resort and for the shortest appropriate period of time.<sup>93</sup> Article 19 guarantees the right to protection from all forms of physical and mental violence, injury or abuse, neglect or negligent treatment, including sexual abuse. In addition, Article 37 states that: “Every child deprived of liberty shall be treated with humanity and respect ...” and “shall be separated from adults unless it is considered in the child’s best interest not to do so...”.

The age of majority is not uniform in Greece: under civil law the age is 18 years, while under criminal law the age is 17. The Committee on the Rights of the Child (CRC) has recommended that, in line with international practice, the age of majority under criminal law be made 18 years, and noted that Greece has indicated its intention to define the age of majority uniformly as 18.<sup>94</sup>

In presenting Greece’s report to the CRC in January 2002, the Greek delegation “underlined that [Greece] was very sensitive to children’s welfare and child rights”, while another member of the delegation, from the Ministry of Justice, stated that Greece’s police officers had special training with respect to Child Law and the Convention. In its report, submitted on 14 April 2000, Greece stated that since 1987 the Greek Police Force had a special Juvenile Division, which had been established in part to ensure that minors were not ill-treated by police officers during preliminary investigations. “*As a rule, minors are arrested by the specially trained officers of the Juvenile Division, are detained in a separate part of Security Police headquarters and are referred to the Juvenile Public Prosecutor, who, if temporary detention is required, orders their detention in a Juvenile Correctional Institution.*” Further: “*The police guarantee all the rights of the accused minor provided for by the Code of Criminal Procedure during preliminary investigation or preliminary*

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<sup>92</sup>According to a survey by staff of the Penal and Criminological Sciences Department, the Law Faculty, Aristotle University of Thessaloniki, published in February 2002.

<sup>93</sup>The more detailed rules for the protection of juveniles deprived of their liberty, adopted by the UN General Assembly in Resolution 45/113 of 14 December 1990, state (Rule 2) that deprivation of liberty of juveniles should be “limited to exceptional cases.”

<sup>94</sup>CRC/C/15/Add.170, 1 February 2002, paragraphs 29 and 30.

*questioning. In particular, in all police authorities accused persons are given lists of their rights, in writing, in two languages (Greek and English), and if they speak neither of these languages an interpreter is engaged to translate the rights. The accused, after having been informed of his rights, then signs a document to this effect, which is also signed by the officer entrusted with this duty.”<sup>95</sup>*

It should be noted, however, that the Juvenile Division referred to above has reportedly so far been established only in Athens and Thessaloniki. Moreover, it appears that in practice the legal provisions and institutional measures outlined above for the protection of children in custody are largely ignored. In the cases referred to in this report, children were treated in the same way as adult detainees; in other words, they were not arrested by specially trained officers, they were not held in separate areas of police stations following their arrest, and they were not provided with information about their rights as detainees. In particular, this appears to be the routine practice when children are arrested together with adults in group arrests of Roma and unauthorized immigrants. The failure to respect these guarantees undoubtedly facilitates other abuses -- in particular the physical and psychological ill-treatment of children by police.

#### **PARASKEVAS TRANTEROS AND DIMOSTHENES ARGYROUDIS**

Two boys, Paraskevas Tranteros, aged 14, and Dimosthenes Argyroudias, aged 13, were arrested on 19 August 1994 and taken to the police station of Kassandria, Halkidiki, in northern Greece, after they were (wrongly) suspected of having stolen money from their employers. They were detained at the police station until almost midnight and it was only some four to five hours after their arrest that their parents learned of their whereabouts. After their release they were examined at Halkidiki hospital on 20 August 1994, which issued a medical certificate recording that one boy had bruising on much of his body, an injury to his skull and slight concussion, while the other had bruises on his right shoulder-blade and swelling of the left temple.

Three police officers were subsequently accused of having kicked and beaten the two boys with a truncheon and a wooden rod in order to make them confess to the theft. One of the police officers was also accused of having forcibly pulled down the trousers and underpants of the two boys. While they lay face down on the floor he allegedly ordered them to shout “I am a fag” while threatening to force the wooden rod into their anuses. The officers denied these charges and said the boys had been beaten by their angry employers.

On 27 May 1999, almost five years after the boys’ arrest and alleged ill-treatment, the Three-Member Misdemeanours’ Court of Halkidiki convicted the three officers of offences against human dignity under Article 137A (3) CC and sentenced them each to four years’ imprisonment and five years’ deprivation of their civil rights.<sup>96</sup> The police officers remained at liberty pending appeal.

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<sup>95</sup>CRC/C/28/Add.17, 25 June 2000, paragraphs 101 and 373.

<sup>96</sup> Decision no.1263/27.5.99

At the appeal hearing before the Three-Member Appeals' Court of Thessaloniki in March 2000, the two young men maintained their previous allegations. They stated that although their two employers had struck them, the beating and ill-treatment they had received from the three police officers had been far more brutal. The three officers again denied the charges against them. Two of them said that they had noticed the boys were bruised, but none of them admitted to having been present when these injuries were inflicted.

On 3 March the court acquitted the three officers. The court found that the boys' accounts of their ill-treatment were exaggerated and that their injuries had been inflicted solely by their two employers -- although for the most part at the police station, in the presence of, and with the toleration of, two of the accused police officers.<sup>97</sup> The court's judgment does not make it clear why it accepted the officers' testimony that they had not beaten the boys, but rejected their claim not to have been present when the boys were beaten (allegedly by their employers).<sup>98</sup> The court also overlooked the fact that it was the duty of the two police officers, as representatives of the state, to protect the two boys from any such assault, and that by failing to intervene they had, by omission, aided and abetted in the assault, in violation of an official's duty.<sup>99</sup> The two boys did not have the right to appeal against this judgment, and no appeal was filed by the prosecuting authorities. Further, no disciplinary or judicial action was taken against the two police officers for failing to prevent the ill-treatment of the two boys by their employers.

The boys reportedly filed a civil suit for damages against the state. However, their chances of being awarded compensation by an administrative court are poor, given that the defendants were acquitted by the criminal court.

#### **REFAT TAFILI**<sup>100</sup>

Refat Tafili, an unauthorized Albanian immigrant aged 16, came to Greece in December 2000, where with the help of a relative he found work. According to his account, at 9.30pm on the evening of 8 February 2001 three plainclothes police officers carried out a raid at a house in the Aghios Stephanos quarter of Athens where he and some other Albanians were staying.

*“When I returned from work, I ate and was preparing to go to sleep, when the police came. They opened the door and came in. They caught hold of me and took me outside. They pushed me to the ground and began to kick my stomach and legs. They dazzled my eyes with an electric torch and spoke to me in Greek, but I didn't understand.”*

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<sup>97</sup>The two employers were sentenced in 1999 to three months' imprisonment each for injuring the boys; their appeal against their conviction was still pending in early 2002.

<sup>98</sup> Decision no.816/3.3.2000 obtained by GHM.

<sup>99</sup>Under Article 1 of the Convention against Torture, torture includes: “...when such pain or suffering is inflicted by ... or with the consent or acquiescence of a public official or other person acting in an official capacity”.

<sup>100</sup>Information on this case is based on a written statement by Refat Tafili, information provided to AI by his lawyer, a report of 12 March 2001 and subsequent information issued by the Ombudsman's Office, an interview by a GHM/MRG-G advocate with Refat Tafili on 1 March 2001 and press reports.

Refat Tafili and another Albanian were taken to the police station in Aghios Stephanos, where they were put in a cell. Refat Tafili shortly afterwards became ill, but instead of summoning medical aid, police turned him out onto the street. The police reportedly failed to record the detention and release of Refat Tafili, or the names of the arresting officers.

Early the next morning his relatives took Refat Tafili to the “G.Gennimatas” General State Hospital of Athens, where he was admitted to the intensive care unit, found to have suffered a double rupture of the spleen, and underwent an emergency operation for its removal. He remained in hospital for just over a week. However, the law requires hospitals to report foreign nationals to the police.<sup>101</sup> Accordingly, at 8.30am on 17 February 2001, while his relatives were waiting to collect him, Refat Tafili was arrested by armed police officers at the hospital and taken to Papagos police station, Athens, to be detained pending deportation. A relative who protested was also taken by the police to Papagos police station where he reported the beating which Refat Tafili had suffered on 8 February. Refat Tafili and his relative were next sent to Police Headquarters in Athens, where they filed a complaint against the three officers who had beaten Refat. The relative was released and Refat Tafili was transferred to Aghia Paraskevi police station where he identified one of the three officers who had beaten him on the night of 8 February. Criminal proceedings were initiated by the police department against the officer and other unidentified police officers. An administrative inquiry was also opened.

Refat Tafili was still weak and in pain; his hospital medical notes had recommended that following his operation particular care be taken to prevent infections. Instead, he was held in a cramped and unhygienic cell, together with five adult immigrants. It is alleged that for two days he was denied food, was not permitted visits from a relative, and was allowed to leave the cell to go to the toilet only twice a day. It was only at the insistence of a relative that after two days he was given the medication he had been prescribed, although not at the prescribed hour.

On 22 February Refat Tafili was ordered by the Ministry of Public Order to leave the country within 15 days, although his medical notes recommended that he remain under medical supervision for at least two months. However, shortly before his release that day his health seriously deteriorated. He was taken in handcuffs from the police station, with a high fever and internal bleeding, to the Sismanoglio Hospital, where he remained until 5 March. On 26 February 2001 his lawyer filed an appeal against his deportation. Following the intervention of the Ombudsman, Refat Tafili was subsequently granted leave, on exceptional grounds, to remain in Greece for a further six months. This leave has since been extended.

Proceedings in this case have been delayed by difficulties in identifying the police officers involved. Refat Tafili was frightened and unwilling to attend an identity parade at Aghios Stephanos Police Station. This was reportedly because the police officer in charge of the inquiry refused to allow him to be accompanied by his lawyer and an interpreter, despite

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<sup>101</sup> The Greek Personal Data Protection Authority has stated that this provision (Article 54 (2) of Law 2910/2001) directly contravenes the principle of non-discrimination and should consequently be amended (Opinion 86/2001 of 19 June 2001).

the fact that, as his lawyer pointed out, he was under age, had no parents in Greece, did not speak Greek and was traumatized. The failure of police at Aghios Stephanos police station to record his detention on 8 February further hindered identification.

However, by the end of the year the administrative inquiry had reportedly concluded that two police officers had committed serious breaches of discipline, and referred them to a Disciplinary Board with the recommendation that one be permanently dismissed and the other suspended from service.<sup>102</sup> According to an unconfirmed press report, this recommendation has been set aside on review and instead it has been recommended that they be exonerated.<sup>103</sup>

Criminal proceedings have proceeded more slowly. Two police officers are reported to have been charged with dangerous bodily injury. The judicial investigation continues to seek to identify a third police officer. In the meantime, Refat Tafili's family have filed a civil claim on his behalf for compensation.

#### **THEODOROS STEPHANOU: ARGOSTOLI, THE ISLAND OF CEPHALONIA**

In August 2001 six young Roma, two of them minors, were detained by police in the town of Argostoli, after a kiosk owner complained that some money had been stolen from him. The two minors were not charged and the other four were subsequently acquitted of theft. All but one alleged on release that they had been ill-treated by police in custody.

One of the group was Theodoros Stephanou, aged 16, from Patras, who had travelled to Argostoli by truck and had spent the evening with his 16-year-old cousin, Vasilis Tsitsikos. According to Theodoros Stephanou, when they returned to the truck to sleep at about 1.30am on 5 August, his sister told them that police had come looking for them and had searched the truck. The two youths went to the police station, where they were questioned in connection with the theft. Theodoros Stephanou described his interrogation by three police officers (one of them the Station Commanding Officer): "... *the policemen kept asking me where I had been and where I had hidden the money. This lasted for approximately half an hour. I had gotten really confused by their incessant questions, when suddenly [one of the police officers] started punching me and slapping me really hard in the face*". One of the police officers stepped out of the room at that moment, leaving Theodoros Stephanou to be interrogated by the Station Commanding Officer and C., a colleague. For the next 15 minutes, Theodoros Stephanou was questioned by the Station Commanding Officer, while being allegedly repeatedly punched and slapped by C. Theodoros Stephanou and Vasilis Tsitsikos (who has not alleged ill-treatment) were later released without charge.

According to Theodoros Stephanou: "*It was just dawn when I left the police station; because of the severe pain and the swelling on my face, my sight had been affected ... and I didn't know where I was going. It was only thanks to my sister who was waiting for me outside the station that I was able to return to the truck.*"

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<sup>102</sup> Ombudsman, *Annual Report 2001, Human Rights*, pp.95-96.

<sup>103</sup> *Eleftherotypia*, 28 June 2002

The same day (5 August 2001) Theodoros Stephanou was examined by a doctor at the General Prefectural Hospital of Cephalonia. A medical certificate issued by the doctor records that Theodoros Stephanou referred to a head injury caused by a beating some 12 hours earlier and that he complained of dizziness and a severe headache. The certificate also noted a slight weakness in visual focusing, and a “*small bruise on the left side of the forehead, swelling and sensitivity to pressure on the ridge of the nose*”.

On 8 October 2001 Theodoros Stephanou, represented by GHM, filed a complaint against the police officers requesting their prosecution on charges under Article 137A (acts of torture and other offences against human dignity) and Article 312 CC (causing bodily injury to a minor). A judicial investigation has been started. In February 2002 the Ombudsman wrote to the police authorities in Argostoli to ask whether a disciplinary inquiry had been undertaken into the allegations made by Theodoros Stephanou and four other young Roma, and if so, what conclusions had been reached. In June the Ombudsman, in a second letter, noted the lack of response by the police authorities (in breach of Article 4(5) of Law 2477/1999), stressed the importance of a thorough investigation into the allegations and requested a reply at the latest by 10 July. At the beginning of July the police authorities replied that an administrative inquiry had been carried out, which was currently being reviewed before being referred to the appropriate body for a decision.

## **B.6. PSYCHOLOGICAL ILL-TREATMENT – THE SEXUAL HUMILIATION AND INTIMIDATION OF DETAINEES**

As has been seen, detainees, both adults and children, have in a number of instances alleged that police officers subjected them to sexual threats and humiliation. This is a form of ill-treatment which is explicitly provided for in Article 137A (3) CC, under which “a serious offence against sexual dignity” is punishable by three to five years’ imprisonment. However, ill-treatment of this kind, although deeply distressing, does not leave physical traces observable by forensic medical examination, and is therefore particularly difficult to prove. There can almost never be supporting evidence, except in the rare instances when there are witnesses present. In the following instance it is alleged that the sexual humiliation of **R.**, an (adult) detainee, took place *in public*.

According to **R.**, he and his brother were stopped by a police patrol in the centre of Athens on 8 May 2001 on their way home from work.<sup>104</sup> A police officer checked their identity and vehicle papers, which were in order. To their surprise the officer then asked them if they were Greeks and where they had concealed drugs. They confirmed they were Greek and denied possessing drugs. The officer next ordered **R.** to lower his trousers and underpants so that he could carry out a body search in full view of passers-by. When **R.** refused and suggested instead that they go to the nearest police station, the police officer allegedly replied: “Are you going to tell me what to do: I know the laws!” and slapped him in the face three times, until he finally submitted and was duly searched. No drugs were found on him.

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<sup>104</sup>Written statement dated 19 May 2001.

Nonetheless, R. and his brother were placed under arrest for “resisting authority”, handcuffed and taken on foot to the Omonia police station. There R. was again searched, after which the police officer who had struck him allegedly “*asked us to do a deal: either we say that we were quarrelling and the police came and separated us and that’s the end of it, or there’s another way -- they’ll plant drugs in our pockets and we can each do two years in jail ...The officer put us in a cell until they had checked our police records, having first taken our IDs and mobile phones. We asked to be allowed to make a telephone call, which they refused, but with the aid of the mobile of another detainee, we were able to contact our boss and inform him briefly about what had happened.*” The two young men were released after a lawyer arrived and they were found to have a clean police record.

A medical certificate (Protocol no: 4368/2001) issued a week later, on 15 May 2001, by the “G.Gennimatas” hospital in Athens records that R. visited the hospital’s Emergency Department on 8 May 2001 and stated that he had been beaten. He was examined and found to have “a wound on the inner surface of the upper lip”.

According to press reports of 11 May 2001 an administrative inquiry into this incident was ordered by the Director of the Athens Police Directorate and on 18 May the Minister of Public Order stated that the leader of the police patrol had been temporarily suspended from service.<sup>105</sup>

### **C. SHOOTINGS BY LAW ENFORCEMENT OFFICIALS RESULTING IN DEATH AND INJURY**

Towards the end of 2001 two young men, a Rom and an Albanian immigrant, died after being shot (in separate incidents) by police officers who subsequently stated that their guns had fired accidentally. These events recalled earlier fatal shootings which resulted in the prosecution of police officers. In several other incidents over the last two years border guards and soldiers on border duties are alleged to have opened fire, without justification, at foreign nationals (in almost all cases, Albanian citizens) seeking to enter the country illegally. During 2001 there were additionally reports that coast guards had in at least two instances fired at vessels said to be transporting unauthorized immigrants to Greece. In one of these incidents a Turkish citizen, Oktay Deliktaş, an alleged people-smuggler, died in August 2001. A judicial investigation was launched into the circumstances of his death.

It is in the nature of their work that law enforcement officials are at times obliged to make split-second decisions in complex and dangerous circumstances, and the difficulties such situations present should not be underestimated. However, in the cases outlined below law enforcement officials used -- or in some cases are alleged to have used -- firearms in violation of international standards. These state that firearms must be used with restraint as a last resort and be limited to situations involving imminent threat of death or serious injury and that their intentional lethal use is permissible only when it is strictly unavoidable in order to protect life.

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<sup>105</sup> *Eleftherotypia*, 19 May 2001.

## C.1. FATAL SHOOTINGS BY POLICE

### MARINOS CHRISTOPOULOS

A police officer shot and killed Marinos Christopoulos, a 21-year-old Rom, in Zefyri, Attica, on 24 October 2001. He had failed to stop the car he was driving when a police patrol signalled to him to pull over. The police officer was arrested and charged with reckless homicide and unlawful use of weapons. He was released on bail five days later and was returned to service, although transferred to another department. His release provoked protest and rioting in the Romani quarter of Zefyri.

On 29 October the police officer stated to the investigating judge that Marinos Christopoulos had attempted to run him down, and to avoid the vehicle he had stepped aside: *“I instinctively took out my gun as we are taught in self-defence courses ... [the car] almost touched me, I turned around and it seems I unconsciously pulled the trigger after having lost my balance and stumbled.”*<sup>106</sup> An autopsy report compiled by the forensic medical service of the Ministry of Justice found that Marinos Christopoulos had been killed by a bullet which entered the back of his head.

In March 2002 the police authorities stated that an administrative inquiry had concluded that the police officer *“acting instinctively, placed his right hand on his pistol, which he wore on his belt, took it out, pointed it towards the car which was driving away, and fired once in that direction, in order to halt its advance”*. The police officer was referred to a Disciplinary Board for a decision as to whether he should be dismissed from service, on the grounds that he had fired a shot at the car to immobilize it, while being aware of, and accepting, the possibility that this action might cause the death of the driver, thereby committing the offence of reckless homicide.<sup>107</sup>

The judicial investigation was completed in January 2002. On 16 July the public prosecutor forwarded the case to the competent judicial council with the proposal that the police officer be referred for trial on a charge of murder (a more serious offence than reckless homicide). The prosecutor argued that the police officer, angered that Marinos Christopoulos had ignored his signal to stop, had deliberately fired at him. By the end of July the judicial council had not issued a decision on this case.

### GENTJAN ÇELNIKU

In another incident which occurred only a month later, on 21 November 2001, Gentjan Çelniku, a 20-year-old immigrant from Albania, died after being shot in the head by a police officer during an identity check at a cafeteria in central Athens. The officer was detained and charged with reckless homicide; he was released on 23 November on bail. He was not suspended from duty pending investigation, despite the gravity of the charge against him, and

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<sup>106</sup> From the case file made available to GHM/MRG-G which, with the aid of a grant provided by the ERRC, engaged legal counsel on behalf of relatives of the victim.

<sup>107</sup> Letter of 15 March 2002 from the police authorities to the Ombudsman.

the fact that he had taken part in this operation against the orders of his superior. The police authorities ordered an administrative inquiry.<sup>108</sup>

There are various accounts of this incident. According to a police statement of the same day, the police officer had observed Gentjan Çelniku, allegedly a suspected violent criminal, making a suspicious movement. When the officer attempted to handcuff the young man, his pistol accidentally fired. However, at a hearing before an investigating judge on 23 November, the officer stated that when he saw Gentjan Çelniku put his hand into his jacket he approached him, pistol in hand, warning him not to move, whereupon Gentjan Çelniku kicked his hand, causing the pistol to discharge.

There are concerns as to the impartiality of the investigation in this case. According to the police officer's testimony, he had sought to arrest Gentjan Çelniku because the latter was suspected of having previously, on 9 November, assaulted and injured two other Albanian immigrants in Athens. There appears, however, to be no record of these two men having reported the incident of 9 November at the time to the police. Rather it seems that they gave statements about the latter incident only on 22 November, between 4 to 5.30am (some hours *after* the death of Gentjan Çelniku) when they were taken by police to a police station. The same day (22 November), the two men underwent forensic medical examination and were found to have sustained injuries (one of them severe injuries, the other light), although the forensic medical reports contain no information about any person or persons responsible for their injuries. Relatives of these two men gave statements to police on 21 November, also *after* the death of Gentjan Çelniku. It thus appears that measures to investigate the incident of 9 November and to establish whether Gentjan Çelniku was guilty of criminal assault were taken only after his death, raising legitimate doubts as to whether the aim of these measures was not primarily to present him as a dangerous criminal and diminish the responsibility of the police officer who shot him.

On 9 July 2002 the public prosecutor presented the case to the competent judicial council with the proposal that the defendant be referred for trial on a charge of manslaughter (a less serious offence than reckless homicide). According to the prosecutor, the pistol had fired accidentally after Gentjan Çelniku, who was seated at the time, kicked the defendant's hand. In his written proposal, the prosecutor stated that it had been confirmed that Gentjan Çelniku had a knife in his jacket, but without specifying the evidence for this. His assertion conflicts with the testimony of a witness, Antonis Karras. The latter stated to the investigating judge on 23 November that he happened to be passing by shortly after Gentjan Çelniku was shot and saw his body being searched, and a knife taken out of his back trouser pocket or a sheath attached to his trouser belt. Shortly afterwards he saw the knife being handed over to a police commander. As the body was removed from the scene the knife was placed on the spot where the body had lain. In clear contravention of the rules of evidence-taking, the police officer who shot Gentjan Çelniku took part in the collection of evidence at the scene and in

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<sup>108</sup>Disciplinary proceedings relating to the administrative inquiry had not been concluded by the end of July 2002.

fact handled the knife in question (his superior officer later testified that he had reprimanded him for this).<sup>109</sup>

On 27 July 2002 a lawyer engaged by GHM to represent relatives of Gentjan Çelniku submitted a memorandum to the judicial council raising objections to the prosecutor's proposal that the defendant be referred to trial on the lesser charge of manslaughter. The memorandum argued that the investigation had been defective: the investigating judge had failed to summon for examination the witnesses (including eye-witnesses) who had given statements to police officers during the preliminary investigation, and as a result certain crucial facts had not been clarified. The memorandum noted, moreover, that police officers who had taken these statements were colleagues of the defendant, and as such were liable to be biased in his favour, as indicated by the apparent attempt to present the victim as a highly dangerous criminal. The memorandum stressed that the prosecutor had offered no explanation for the fact that forensic examination had found two wounds on the victim's head, although he had been shot with only one bullet which had not exited. Additionally, the memorandum pointed to inconsistencies in the evidence, and argued that the claim that Gentjan Çelniku had caused the pistol to fire by kicking the defendant's hand conflicted with forensic evidence which showed that Gentjan Çelniku had been shot from behind. The judicial council had not issued a decision on this case by the end of July 2002.

## **C.2. INTERNATIONAL STANDARDS AND PROVISIONS IN GREEK LAW**

Article 2 of the European Convention on Human Rights guarantees the right to life, a right which is also enshrined in Article 6 of the ICCPR, which states in particular: "No one shall be arbitrarily deprived of his life." As the Human Rights Committee noted in its General Comment on Article 6 "... States Parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the state is a matter of the utmost gravity."<sup>110</sup> International standards have been developed to protect the right to life, including the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Basic Principles on Force and Firearms) which define the limited circumstances in which law enforcement officials may use force and firearms.<sup>111</sup>

In particular, Principle 9 states: "*Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve*

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<sup>109</sup> Information based on documents received by GHM, acting on behalf of relatives of Gentjan Çelniku.

<sup>110</sup> Human Rights Committee, General Comment No.6, Article 6, Sixteenth Session (1982), paragraph 3.

<sup>111</sup> The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials were adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders in September 1990.

*these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.”*<sup>112</sup>

The Principles further require that any use of firearms by law enforcement officials must be reported, while all uses of force and firearms which result in injury or death must be reviewed. The lethal use of force in contravention of these Principles amounts to arbitrary deprivation of life, while the non-lethal use may amount to the violation of an individual's right to freedom from torture or cruel or degrading treatment or punishment, and to security of the person, rights enshrined in Articles 7 and 9 of the ICCPR.

### **Relevant provisions in Greek legislation**

Acts of force causing death, including murder (Article 299) and manslaughter (Article 302), are defined and proscribed in Chapter 15 of the Criminal Code, while Chapter 16 deals with acts causing bodily injury. In a number of cases described in this report police officers have been investigated on a charge of murder qualified as “reckless”, meaning that the perpetrator was aware of, and accepted, the *possible* consequences of his act (for the purposes of this report the term “reckless homicide” is used).<sup>113</sup> In some cases they have also been charged with unlawful use of weapons. The perpetration of an offence by means of the unlawful use of a weapon is punishable under Article 14 of Law 2168/1993, which states: “Whoever with the use of a weapon ... perpetrates a felony or misdemeanour intentionally or by negligence and is convicted shall, independently of the penalty imposed, be punished with at least six months’ imprisonment.”

The use of firearms by law enforcement officials in Greece was still (at the time of writing this report) primarily regulated by a law which was generally accepted as outdated (Article 1 of Law 29 adopted in 1943 at a time when Greece was under German occupation). This article lists a wide range of circumstances in which a police officer may use firearms “... to enforce the laws, decrees and decisions of the competent Authorities or to disperse public gatherings or suppress mutinies ... without [bearing] any responsibility for the consequences”.

These circumstances are as follows (summarized): when the officer is attacked by someone “with firearms or other objects that may cause serious bodily injuries”; “when there is no other way to defend a certain space, place or persons the officer has been charged to guard”; “when a public gathering leads to pillaging, violence against other citizens, damage to public or private property... or activities disturbing public order”; when demonstrators taking

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<sup>112</sup> Other relevant Principles include Principle 4: “Law enforcement officials, in carrying out their duty, shall as far as possible apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result” and Principle 5: “Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved; b) Minimize damage and injury, and respect and preserve human life; c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment; d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.”

<sup>113</sup> In Greek: ανθρωποκτονία με πρόθεση με ενδεχόμενο δόλο.

part in an illegal demonstration refuse to obey orders to disperse; when mutineers fail to obey orders to disperse. (Other provisions allowing the use of firearms against escaping prisoners have been declared unconstitutional and non-applicable.<sup>114</sup>)

The above provisions were modified by Article 133 of Presidential Decree 141/1991 which provides for the use of firearms in the circumstances defined above but only when absolutely necessary and when all less extreme methods have been exhausted, as well as in cases provided for by provisions of the Criminal Code dealing with defence and states of necessity.<sup>115</sup>

Law 29/1943 has rightly been criticized as “defective” and “vague” by the Public Prosecutor of the Supreme Court, among others.<sup>116</sup> Senior Greek police officers and trade unions representing Greek police employees have called for this legislation to be updated and are reported to have presented a draft law to the Ministry of Public Order. In April 2001 the NCHR, in a letter to the Minister of Public Order, expressed the view that existing legislation concerning the use of firearms by police was unclear and ill-defined, and that new legislation, which would incorporate relevant international human rights law and guidelines, was imperative.<sup>117</sup> In February 2002 the Minister of Public Order announced that a new law would shortly be enacted, which would “safeguard citizens against the reckless use of police weapons, but also safeguard police officers who will know better when they can use them”.<sup>118</sup> In April 2002 two draft laws, on the carrying and use of arms by police, and on police training, were reported to have been prepared by a committee of experts, but by the end of July these laws had not yet been published or adopted.

### **C.3. THE PROSECUTION OF POLICE OFFICERS IN CONNECTION WITH FATAL SHOOTINGS – FIVE CASES**

#### **NIKOS LEONIDIS, DECEASED; F., THE DEFENDANT -- CHARGES DISMISSED**

In the early hours of 25 March 2000 Nikos Leonidis, an 18-year-old Pontic Greek (an ethnic Greek from the former Soviet Union), died after being shot by a police officer in Thessaloniki. According to the account of this incident as presented in a subsequent judicial ruling, police officer F. was driving a police patrol car when he observed three young men on the street. The three were not committing any offence, but F. noticed in his car mirror that one of the young

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<sup>114</sup>Opinion 1802/1996 of the Public Prosecutor of the Supreme Court.

<sup>115</sup>Article 22 CC establishes that an act (including one causing death or injury) is not unlawful if it was necessary to defend the person or another person against an unjustified and present attack. The amount of force that may be used against the aggressor depends on the degree of danger, the kind of injury which is threatened and other circumstances. Under Article 25 CC, dealing with a "state of necessity", an act is not unlawful if committed in order to prevent a harm threatening, through no fault of the perpetrator, his person or his property or that of another person, provided that the harm prevented is substantially greater than that produced by his act.

<sup>116</sup>Opinion 12/1992 of the Public Prosecutor of the Supreme Court.

<sup>117</sup>NCHR, *Report 2001*, pp.105-116.

<sup>118</sup>*Eleftherotypia*, 14 February 2002

men turned to look at the police car as it passed. There had recently been some burglaries in that street, so F. decided to check their identity. However, as he drove back towards the three youths, they ran away. He and a colleague ran after two of the young men, one of whom was Nikos Leonidis. According to F., as he approached Nikos Leonidis, the latter put his hand inside his jacket. F., suspecting that Nikos Leonidis might be about to take out a weapon, pulled out his own service revolver. With the revolver in his right hand, he called to Nikos Leonidis that he was a police officer and ordered him to stop. With his left hand he caught hold of the young man, pushed him against a car and immobilized him, forcing him to raise his hands and place them on the car roof. Then, with his left hand F. twisted the young man's left wrist behind his back to handcuff him. According to F., at that point Nikos Leonidis jabbed him with his right elbow in the right side, causing him sharp pain.<sup>119</sup> Reacting to the pain, F. bent forward, then drew himself up, while his revolver -- which till then he had held pointed towards the sky -- accidentally discharged, firing at point-blank range a single shot in the lower part of Nikos Leonidis' right ear, instantly killing him. F.'s colleague, the only witness to the incident, later testified that at the time he was about five metres away, but did not see how the gun fired, although he witnessed F. immobilize the victim, and the blow which F. received.

F. was shortly afterwards arrested and charged with reckless homicide, exceeding the limits of self-defence and unlawful use of weapons. He was released by court order three days later.

The death of Nikos Leonidis provoked an outcry. A press report cited the angry reaction of members of the Pontic Greek community in Thessaloniki, who complained of police harassment: "*They stop us and check our IDs for no reason, just because they hear us speak broken Greek.*" The Vice-President of the Union of Police Employees of Thessaloniki denied these allegations: "*The Police Force is not imbued with racism*". He laid the blame instead on outdated equipment, complaining that police were issued with service revolvers dating from 1965 "*which are not secure like pistols, and risk firing accidentally, as happened in this case...our colleagues are obliged to buy others with their own money*".<sup>120</sup>

Following judicial investigation the case was referred to the competent judicial council which on 29 March 2001 decided that F. should not be indicted and referred for trial. According to this decision, Nikos Leonidis' death had resulted from his sudden and violent assault on F., and the accidental discharge of F.'s revolver that was its consequence. The father of Nikos Leonidis appealed against this decision. The appeal argued that F.'s account of events was contradictory, and that ballistic evidence and the findings of the autopsy did not support his description of the incident. In particular it pointed to the fact that the revolver could only have fired if the trigger had been squeezed. On 18 May 2001 the Appeals' Deputy Prosecutor of Thessaloniki presented the appeal to the Appeals' Judicial Council of Thessaloniki. He proposed that the appeal be accepted, and further recommended that F. be referred to trial on a charge of murder, rather than on charges of reckless homicide and exceeding the limits of self-defence. He noted that Nikos Leonidis had already been

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<sup>119</sup>Forensic medical evidence showed bruising apparently consistent with this allegation.

<sup>120</sup>*Eleftherotipia*, 28 March 2000.

apprehended at the time that he was shot, and did not present any danger, so there could be no question of self-defence. He also argued that F. was an experienced officer, and that at the time he was holding the gun correctly, with his hand on the trigger. In his view, F. had vindictively shot Nikos Leonidis in response to the pain the latter had caused him.

The Appeals' Judicial Council, however, confirmed the dismissal of charges against F. In its decision, dated 18 June 2001, it placed the entire responsibility for the death of Nikos Leonidis on the victim himself. "*The [elbow] blow surprised the defendant, his body first bent forwards and then backwards to the left, because of the pain and the surprise he felt and his weapon, which was a revolver [an ADE 3316 Smith and Wesson, 357 Magnum] and did not have a safety catch, discharged.*"<sup>121</sup>

It is notable that this conclusion does not indicate how the trigger came to be squeezed, although it seems to suggest that the discharge of the revolver was in some way connected with the movements of F.'s *body*.

The Appeals' Judicial Council further justified its acceptance of F.'s account of Nikos Leonidis' alleged attempt to escape, following apprehension, and his attack on F., on the following grounds: the fact that Nikos Leonidis had a friend who allegedly had committed offences, that his brother had been charged with various offences, that he himself had previously been detained for questioning by police, that at the age of 14 he had taken a motorcycle for a joy-ride, and that the autopsy had found traces of narcotics in his blood. Thus, the court argued: "... *it is absolutely logical that [he] would have wished at all costs to escape arrest, and that is why [he attacked]*".

The Appeals' Judicial Council, on the other hand, found that on the night in question F. "... *carried out his duties impeccably. He pursued [Nikos Leonidis] with professional conscientiousness, he did not fire his gun during the pursuit, **although another in his place might have done so** [emphasis added], because he was in an inhabited area and there was a danger of causing injury to someone ...*". It concluded: "*There is nothing to show that F., given the circumstances and his knowledge and abilities, could have foreseen and avoided the death of the victim.*"

This conclusion appears to ignore not only international standards on the use of force and firearms, but also Greek law. It implies that F. had shown unusual and exemplary restraint by not firing at Nikos Leonidis when pursuing him -- overlooking the fact that Nikos Leonidis at the time that he was first observed by F. was not committing any criminal offence, much less a violent one, that the incident had not been preceded by violence or disorder of any kind, and that Nikos Leonidis had not threatened F. with a weapon either during pursuit or on apprehension.

The family of Nikos Leonidis has filed an appeal to the Supreme Court against the decision to dismiss charges against F, and the results of this appeal were reportedly expected to be made known in September 2002.

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<sup>121</sup>Decision 895/2001 made available to AI.

**STEPHANOS SAPOUNAS, DECEASED; ATHANASIOS ZIOGAS CONVICTED OF MANSLAUGHTER**

On 3 November 1996 Stephanos Sapounas was shot and critically wounded by Athanasios Ziogas, a police officer, when he failed to stop his car at a police road-block at Ano Liosia near Athens. The bullet went through the back window of the car and hit Stephanos Sapounas in the back of the neck, leaving him instantly paralysed. This incident took place in the vicinity of a Romani settlement at Ano Liosia, and according to a statement subsequently made to the investigating judge by a colleague of Athanasios Ziogas, who was with him at the time: “We supposed that he [Stephanos Sapounas] was some Gypsy”.

Athanasios Ziogas and his colleague left the scene and did not report the incident. It was later revealed that they had been patrolling an area outside their beat. Stephanos Sapounas was taken to hospital, where doctors notified the police authorities. It was only two days later, after an administrative inquiry was launched and police officers in the area were required to hand over their weapons for ballistic examination, that Athanasios Ziogas came forward to report the incident. It appears also that although the police authorities were aware of Stephanos Sapounas’ identity by late at night on 3 November, they did not immediately notify his family, who received a telephone call from the hospital only three days later, on 6 November.

Stephanos Sapounas died of his injuries some five months later, in April 1997. An administrative inquiry, which lasted almost three years, concluded that: “[Athanasios Ziogas] committed reckless homicide, using a firearm, that is to say he did not directly seek the victim’s death, but [intended] to halt the car by any means; however, he was aware that it was possible that gunfire might cause death and he accepted this as a possible consequence of his action.” The inquiry recommended his dismissal and the temporary suspension from service of his colleague.

Although a judicial investigation was formally opened in early 1997, the case file contains no record of any action having been taken until December 1998, when the family of the victim informed the investigating judge of Stephanos Sapounas’ death and joined criminal proceedings as civil claimants. It was only in March 1999, almost two years after the death of Stephanos Sapounas, that the investigating judge sought information from the hospital about the treatment he had received and the cause of his death. On 7 April 2000 the competent judicial council ruled that Athanasios Ziogas be indicted on a charge of manslaughter, rather than on the original, more serious, charge of reckless homicide. An appeal by the victim’s family against this decision was rejected on procedural grounds on 27 June 2000. Athanasios Ziogas was additionally charged with unlawful use of weapons. Charges against his colleague were dismissed by the judicial council, and an appeal by the victim’s family against this decision was also rejected.

Over five years after the shooting, Athanasios Ziogas was tried on 14 February 2002 by the Third Three-Member Misdemeanours’ Court in Athens. At the trial he maintained that his gun fired accidentally, when he stumbled in his effort to avoid the oncoming car. The court, however, found him guilty of manslaughter and unlawful use of arms and sentenced

him to four and a half years' imprisonment, suspended pending appeal, which was due to be heard on 23 September 2002.<sup>122</sup>

**ANASTASIOS MOURATIS, DECEASED; DIMITRIOS TRIMMIS CONVICTED OF MANSLAUGHTER**

On 20 November 1996 police had set up a road-block outside the town of Livadia (Beotia, central Greece) after reportedly receiving information that a suspected murderer was among a group of some 35 Roma travelling in a convoy of five pick-up trucks. They pulled over all five vehicles and ordered the passengers to get out and lie face down on the ground, allegedly threatening to shoot them if they disobeyed. As the Roma lay on the ground, police officers allegedly kicked, beat and stepped on them, including the children. Dimitrios Trimmis, a traffic police officer, supervised the occupants of the first vehicle, four Roma from a Romani settlement at Ano Liosia, including Anastasios Mouratis, aged 45, and his two teenage sons. As the four lay on the ground, Anastasios Mouratis made a movement; according to one of the sons, his father raised and turned his head in order to see if his sons were safe. Dimitrios Trimmis shouted to him to lie down. According to evidence subsequently produced in court, when Anastasios Mouratis did not immediately obey this order, Dimitrios Trimmis tried to push him down with his left hand. As he did so, the submachine gun he was holding in his other hand slipped, and while trying to regain control of it he accidentally pulled the trigger, fatally wounding Anastasios Mouratis, who died almost immediately.

The same day Dimitrios Trimmis presented himself to Livadia police station and was detained; he was temporarily suspended from duty and an administrative inquiry was instituted. (In January 1997 this inquiry recommended his dismissal from service, but following his appeal he received instead a disciplinary sanction of three months' suspension from service.)

On 22 November 1996 Dimitrios Trimmis was released after being charged with reckless homicide and unlawful use of weapons. Two and a half years later, in June 1999, he was indicted on a charge of manslaughter (the charge of unlawful use of weapons was dropped).

This case brings into particularly sharp focus the issue of the training given to police officers in the use of firearms. An excerpt from a ruling by the Appeals' Judicial Council of Athens, confirming that the charge against Dimitrios Trimmis of "unlawful use of weapons" be dismissed, indicates a disturbing lack of professional competence in an officer taking part in a potentially dangerous operation.

*"The accused, who was carrying a submachine gun, type MP5A3, loaded and not secured, from a lack of attention ... did not hold the weapon as required by service regulations for that kind of weapon; but rather like a revolver or pistol, with only one hand and the barrel pointing towards the sky, supported on his shoulder; with the result that when, probably due to its weight, it fell from his shoulder, with the barrel pointing towards Anastasios Mouratis, and the accused tried to return it to its initial -*

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<sup>122</sup> Documentation on this case obtained by GHM, which observed the trial of Athanasios Ziogas on 14 February 2002.

- although incorrect -- position on his shoulder, it fired, fatally wounding Anastasios Mouratis.”<sup>123</sup>

At the trial the prosecutor, and also a police firearms instructor who testified, stated that Dimitrios Trimmis was inadequately trained. The court learned that he had received five days' basic training in the use of firearms in 1995, and a further two days in 1996. He had apparently only once previously fired a weapon of this type, which according to police regulations should have been held with both hands.

On 17 April 2002, some five and a half years after the death of Anastasios Mouratis, the Three-Member Misdemeanours' Court of Livadia found Dimitrios Trimmis guilty of manslaughter and sentenced him to a suspended two-year prison term. He has filed an appeal.<sup>124</sup>

This case also provides a striking illustration of the misconceived solidarity which police often show towards a colleague exposed to public criticism or penal prosecution. On 29 November 1996, only nine days after the death of Anastasios Mouratis, at a time when administrative and judicial investigations were only starting, the Union of Police Employees of Beotia Prefecture reportedly issued a categorical statement that Dimitrios Trimmis had acted “impeccably, in accordance with the situation on the ground and with the expertise which he had acquired from his training” -- a judgment that was patently misplaced as both judicial proceedings and the administrative inquiry subsequently demonstrated.

#### **MARKO BULATOVIĆ, DECEASED; KYRIAKOS VANDOULIS CONVICTED OF MANSLAUGHTER**

On 23 October 1998 a plainclothes police officer, Kyriakos Vandoulis, shot in the chest and fatally wounded Marko Bulatović, a 17-year-old high-school student from Serbia, during an operation to catch a purse-snatcher in central Thessaloniki. The owner of the purse had reportedly informed the police that the thief spoke Serbian. Marko Bulatović was at the time visiting Thessaloniki on a school excursion. He was unarmed and, as it was subsequently established, had not committed the theft. Following this incident Kyriakos Vandoulis was arrested and detained. The following day Thessaloniki's Police Headquarters reportedly released a statement which claimed that Marko Bulatović and his class-mates had “exerted pressure” on the police officer and as a result his pistol had accidentally fired.<sup>125</sup>

On 24 October an administrative inquiry was opened, and Kyriakos Vandoulis was suspended from duty.<sup>126</sup> On 27 October criminal proceedings were started against him on charges of reckless homicide and unlawful use of weapons. According to a press report, Kyriakos Vandoulis told the prosecuting authorities that his pistol had fired accidentally while

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<sup>123</sup> Decision 1058/2000.

<sup>124</sup> At this trial the family of Anastasios Mouratis was represented by legal counsel engaged by GHM.

<sup>125</sup> *Macedonian Press Agency*, 24 October 1998.

<sup>126</sup> He was reportedly returned to duty in 1999.

he held it in one hand and spread both arms out to prevent Marko Bulatović from fleeing.<sup>127</sup> Following a court hearing, he was released on bail.

In November 1999 the competent judicial council ruled that Kyriakos Vandoulis be referred for trial on a charge of manslaughter rather than reckless homicide. Marko Bulatović's family unsuccessfully appealed against this decision.

At the trial before the Three-Member Misdemeanours' Court of Thessaloniki lawyers acting for the family of Marko Bulatović again argued that Kyriakos Vandoulis was guilty of reckless homicide. Evidence compiled by Serbian forensic and ballistic experts was presented which reportedly concluded that the pistol used by Kyriakos Vandoulis had not fired accidentally. According to this evidence, Kyriakos Vandoulis had immobilized Marko Bulatović, and pressed the pistol, cocked and with the safety catch released, against his chest, before pulling the trigger.<sup>128</sup> However, witnesses, including other police officers, asserted that the pistol had fired accidentally after Kyriakos Vandoulis was pushed.<sup>129</sup>

On 28 June 2000 the court found Kyriakos Vandoulis guilty of manslaughter and unlawful use of weapons and sentenced him to a 27-month prison term suspended for three years. At the request of Marko Bulatović's family, the Appeals' Prosecutor of Thessaloniki in July 2000 filed an appeal, calling for a heavier sentence. On 3 April 2002 this appeal was rejected and the original sentence confirmed. Members of Marko Bulatović's family have been awarded material damages by an administrative court.

### **A felony or misdemeanour?**

As has been seen, in the four cases described above the defendant was initially investigated on a charge of reckless homicide. In the first case charges were dropped and the defendant was not referred for trial, despite an appeal by the victim's family and the recommendation of the Appeals' Prosecutor. In the three other cases the defendant was indicted and convicted on the lesser charge of manslaughter, although the families of Stephanos Sapounas and Marko Bulatović appealed, unsuccessfully, for the defendant to be tried on the original charge of reckless homicide. It should be noted that the legal classification of these offences has significant practical consequences not only for the defendant, but also for relatives of the victim if they have joined criminal proceedings as civil claimants. Reckless homicide is a felony, the most serious category of criminal offence, for which courts -- depending on the circumstances under which it is committed -- may impose prison sentences ranging from five years to life. Manslaughter, on the other hand, is classed as a misdemeanour and is punishable with three months' to five years' imprisonment.<sup>130</sup> Civil claimants have the right to appeal against a decision of the judicial council not to refer the defendant for trial. However, they can appeal against other decisions of the judicial council only if the defendant is charged with an

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<sup>127</sup> *Athens News Agency*, 28 October 1998.

<sup>128</sup> Information provided to AI by Serbian legal counsel acting for Marko Bulatović's family.

<sup>129</sup> The court reportedly accepted that Marko Bulatović had not been in any way at fault.

<sup>130</sup> Under Greek law, offences are classified as petty offences, for which the maximum prison sentence is one month; misdemeanours, which carry a maximum prison sentence of five years, and felonies, for which the maximum penalty is life imprisonment.

offence for which the minimum penalty is over one year's imprisonment. As has been seen, this meant, for example, that relatives of Stephanos Sapounas could not challenge the decision of the judicial council to refer Athanasios Ziogas for trial on a charge of manslaughter.

Furthermore, the classification of the offence also determines the applicable statute of limitation. For a felony the statute of limitation is 15 years (20 years for felonies punishable by life imprisonment), which can be extended for a further five years. In the case of misdemeanours the statute of limitation is only five years, extendable for a further three years. Given the frequently protracted nature of legal proceedings (over five years passed before the officers charged with the manslaughter of Stephanos Sapounas and Anastasios Mouratis were brought to trial in first instance) there is a risk that in cases where the defendant is charged with manslaughter an irreversible court decision may not be reached within the statutory eight years and that proceedings against the defendant will accordingly be stopped.

#### **ANGELOS CELAL, DECEASED; G., DEFENDANT -- CHARGES DISMISSED**

On 1 April 1998 Angelos Celal, a 29-year-old Rom from Halkidona near Thessaloniki, died after being shot by a police officer. In this case the police officer concerned claimed that he fired his gun in legitimate self-defence (as did his colleagues who also fired on the same occasion). However, this claim, and the circumstances surrounding the shooting and killing of Angelos Celal, has been disputed.

According to statements by two witnesses, Vasilis Rasimoglou and Haris Frangoulis (friends of Angelos Celal), the three had gone for a drive that evening in a small pick-up truck driven by Angelos Celal. They had smoked some hashish, and on their way home Angelos Celal stopped the truck near a barn and they got out. Shortly afterwards they heard gunshots; they ran back to the car and as Angelos Celal drove off police officers fired at the vehicle. Angelos Celal was fatally wounded. An autopsy was carried out the following day, which found that he had received one bullet in the spine and another in the back of the head; it concluded that the bullets had been fired by a service gun and had caused his death.

The four police officers present at this incident later testified that they had gone to the barn after receiving information that a stolen car had been hidden there. They had remained at the scene in order to ambush the unknown thieves. At about 10.30pm a small truck drew up outside the barn, and Haris Frangoulis entered. One of the police officers attempted to arrest him and a violent struggle ensued. Haris Frangoulis escaped and ran off towards the truck. The police called on him to surrender, but as he ran away he and one of his friends fired at the police officers, who fired back. Before getting into the truck, they fired again and once again the police officers returned fire, puncturing the truck's front left tyre. As the truck drove off, further shots were fired from it, and one of the police officers returned the shots. Ballistic evidence subsequently showed that during this incident three of the four police officers had used firearms.

An administrative inquiry was initiated on 3 April 1998 which was subsequently supplemented by a second inquiry. Both these inquiries concluded that the three police officers had acted in self-defence and that no disciplinary measures should be taken against them.

Although the police authorities were required by law to inform the prosecuting authorities without delay of the fatal shooting of Angelos Celal, it appears that they failed to do so until 16 April, over two weeks after his death. The father of Angelos Celal had meanwhile, on 6 April, filed a criminal complaint, in which he stated that his son had not been armed, and alleged that the bullets shot by the police officers from a distance of between five to eight metres must have been deliberately aimed at the Roma, rather than at the wheels of the truck. On 22 May the Thessaloniki prosecuting authorities instructed an investigating judge to carry out a main investigation, as a result of which criminal proceedings were started against the two Roma and three police officers. Haris Frangoulis and Vasilis Rasimoglou were charged with grand larceny. Haris Frangoulis was also charged with attempted murder and attempted grievous bodily injury, unlawful possession and use of weapons and resisting arrest. One police officer, G., was charged with the murder of Angelos Celal; he was also, together with two other officers, charged with attempted murder and damage to private property. No charges were brought against the fourth officer.

The judicial investigation was not completed until 31 January 2000, when the prosecutor forwarded the case to the competent judicial council with the proposal that the charges against the three police officers be dismissed, on the grounds that they had acted in self-defence. This proposal was accepted by the judicial council which on 23 February 2000 decided that the police officers should not be indicted and referred for trial.<sup>131</sup> As in the case of the administrative inquiries, this ruling was essentially based on the testimony of the four police officers.

The ruling that the police officers had acted in legitimate self-defence, in circumstances in which there was a present and immediate danger to their lives, depended on the claim that there had been a repeated exchange of gunfire between the Roma and police officers. Ballistic evidence, however, did not support this claim. On 2 April 1998 an apparently meticulous examination of the site by police took place; of 17 bullets and cartridges found on the site, 15 or 16 were shown, on examination, to belong to the service and private revolvers of the police officers. Only one imprint in the metal door of the barn and a cartridge corresponding to this imprint was found which did not come from the officers' weapons (no corresponding gun was found, although a similar cartridge was found at the home of Haris Frangoulis). There was no evidence that Angelos Celal had carried or used a weapon. Forensic medical evidence and an expert examination of the truck concluded that he had been shot through the back window of the cabin of the truck while driving away from the scene. G., an experienced officer, who fired the shot that killed Angelos Celal, by his own admission was not crouching or lying down at the time, or otherwise attempting to shield himself from gunfire, but was standing up and firing (in the dark) after the departing truck at a time when, according to the testimony of one of his colleagues, "the danger had passed".

In April 2000 a lawyer engaged by GHM/MRG-G requested the prosecuting authorities to appeal against the judicial council's decision to dismiss charges against the police officers. The request argued that the evidence did not support the conclusion that the accused officers had acted in legitimate self-defence and that, on the contrary, Angelos Celal

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<sup>131</sup>Decision 222/23.02.2000.

had been unlawfully killed at a time when there was no present and immediate danger to the lives of the police officers. This request did not receive a response. In May 2000 the father of Angelos Celal also filed an appeal, which was rejected in July 2000.

#### **C.4. BORDER POLICING -- THE USE OF FIREARMS IN DISPUTED CIRCUMSTANCES RESULTING IN INJURIES AND A DEATH**

Every year the Albanian and Greek press carry brief reports of incidents in which Albanian citizens, while seeking to enter Greece illegally, have been wounded, in some instances fatally, after being fired at by Greek police forces (border guards), soldiers or coastguards on border duty. There were at least four such incidents reported in 2000, three in 2001 and two in the first half of 2002. The Albanian and Greek versions of these events sometimes differ markedly. In particular, Greek claims that border forces resorted to firearms in self-defence against armed Albanian criminals have sometimes been disputed by Albanian sources, as in the case of the shooting and killing of Bledar Qoshku described below. Information about such incidents, which usually take place at night in remote terrain, is scarce. Minimal press coverage and the stereotyping of Albanians as criminals have encouraged a climate in which such incidents and their investigation by the Greek authorities have received little attention.

That Greece has a sovereign prerogative to manage its borders and immigration is not contested, nor is the fact that military, naval and police forces carrying out border duties are exposed to dangers. Nonetheless, this does not exempt the relevant authorities from their obligation to observe international human rights law and standards, which guarantee the rights to life, to freedom from torture or other cruel, inhuman or degrading treatment and to security of the person. While some of those who seek to cross the border illegally into Greece may be involved in serious criminal activity, including trafficking in drugs, weapons, women and children, the great majority are men driven by poverty and unemployment at home to seek work in Greece on farms, building sites and in the service industry.

##### **FERHAT ÇEKA, A PENSIONER, SHOT AND WOUNDED NEAR THE BORDER**

Since 1991 Ferhat Çeka, aged 67, has supplemented his meagre pension and supported his family in Tirana, the Albanian capital, by spending several months almost every year working on farms in Greece. In March 2002 he set out once again. According to his account, received by AI, on the evening of 8 March he crossed clandestinely into Greece, where shortly afterwards, alone and unarmed, he was apprehended by soldiers close to the military outpost of Aghia Ioanna.

*“At about 6.30pm, I crossed over a stream which runs along the border and began to climb the mountainside ... When I reached the top I took a path through the forest. I had not gone more than 300 metres when I heard a dog; the dog sprang at me and caught me by the sleeve of my jacket. Then I heard soldiers shout: ‘Halt!’ I answered: ‘Yes!’ I did not try to flee and did nothing to suggest to the soldiers that I wished to run away. On the contrary, I obeyed their orders.*”

*“The soldiers called to me from a distance and I replied that I was alone. They came and searched me, called off the dog, and took away everything I had on me (passport, wallet, three packets of cigarettes, an electric torch) ... They [then] told me to lie face down on the ground. When I did this, they began to kick me and beat me with their rifle-butts on my side, back and shoulders. I said: ‘Please, I’m an old man, please don’t hit me’. They yelled: ‘Don’t say a word unless we ask you questions’.*

*After they had well and truly beaten me, two soldiers (there was a third soldier who stood at a distance of some 12 to 15 metres and did not approach) told me to get up. With difficulty I got to my feet. The two soldiers who had beaten me withdrew some five metres and said something to each other in a low voice. I did not understand or hear what they were saying. But after this conversation, one of them approached me from behind with a pistol in his hand and said: ‘Walk on ahead’, and as I raised my right foot to take the first step, he shot me with the pistol, and again told me to walk on. But I told him to shoot me in the head and finish me off. Then that soldier said to me: ‘Why did you go back?’ -- although I had only taken one step forward. As I lay wounded on the ground, they said to me: ‘Now run off to Albania’.*

*“They left me lying there ... (they covered me with my jacket and with a jacket of theirs after I told them that I was cold and shivering). After about an hour a military doctor came. He tried to staunch the bleeding; he tore off a piece of my shirt and placed it on the right side of my stomach where the bullet had come out and told me to press it [against the wound]. He took two belts from the soldiers, and fastened them tightly around the wounds where the bullet had entered and come out.”*

Ferhat Çeka was then taken by military jeep to an ambulance and transported to hospital in Kastoria, where he underwent an operation.

*“On my ninth day in hospital I was questioned by an officer who was accompanied by a secretary ... There was no interpreter, and I didn’t have a lawyer.<sup>132</sup> They gave me to sign what they had written without reading or translating it. I signed it because I was still in their hands and very frightened. I know Greek a bit, but only spoken Greek. I can’t read or write in Greek.”<sup>133</sup>*

Ferhat Çeka was discharged from Kastoria Hospital on 21 March 2002 and returned to Albania. A medical report issued by the hospital that day states that he was admitted with a bullet wound which entered the right side of the kidney and exited from the right abdomen. According to the report *“He underwent an operation in which his right kidney was removed as well as part of the right lobe of the liver.”*

On his return to Albania, Ferhat Çeka sought further medical treatment. A medical report dated 28 March, issued in Tirana by a physician working for the Albanian Rehabilitation Centre for Trauma and Torture, confirmed the above injuries and noted that he was suffering from anxiety and depression. *“He recalls these events in detail ... he has nightmares, and cries out in his sleep.”*

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<sup>132</sup> An officer in charge of an administrative inquiry into this incident informed GHM (orally) on 2 April 2002 that an interpreter was present when he questioned Ferhat Çeka.

<sup>133</sup> From an interview with physicians of the Albanian Rehabilitation Centre for Trauma and Torture, Tirana.

In March 2002 the Greek military authorities initiated an administrative inquiry into this incident. The results of this inquiry, which had concluded in early May, were not made public but were forwarded to higher military authorities for review. The case was subsequently referred to the Military Prosecutor of Thessaloniki, but by mid-July the latter had not yet decided whether to initiate criminal proceedings.<sup>134</sup>

#### **AFRIM SALLA, AGED 15, WOUNDED**

In the early hours of 4 June 2001 a group of 12 Albanians crossed the border into Greece clandestinely, and were approaching the town of Kastoria when they were observed by Greek border guards, who were allegedly lying in wait for drug or arms traffickers. They called to the group to stop. However, realizing that they had been sighted, the Albanians scattered and fled in the dark. The border guards fired after them, shooting Afrim Salla, aged 15, from the village of Plangarica (Elbasan district), in the spine. Afrim Salla and another member of the group, who had remained with him, were found by the border guards and he was taken to hospital in Kastoria. Because of the severity of his injuries, Afrim Salla was transferred from Kastoria to hospital in Thessaloniki, where he underwent an operation. His injuries have left him permanently paralysed from the waist down.<sup>135</sup> His family later brought him back to Albania and filed a civil claim on his behalf for compensation.

Following a preliminary investigation by the local Greek police authorities the case file was forwarded to the Prosecutor's Office in Kastoria. On 14 August 2001 the Prosecutor of the Court of First Instance sent a report to the Appeals' Prosecutor of Western Macedonia in which he stated that the preliminary investigation had shown that Afrim Salla's injuries were not due to any criminal conduct on the part of a border guard. Evidence presented in the case file showed that the border guard who had wounded Afrim Salla had fired in "a safe direction" "to frighten" the Albanians who had not obeyed the command to stop.



**Afrim Salla, paralyzed after being shot by a border guard © AI**

*Greece: Allegations of reckless use of firearms by border police - AI Index: 25/014/2002).*

<sup>135</sup>*Gazeta Shqiptare*, Tirana, 10 June 2001 and information provided by a relative of Afrim Salla to AI.

However, due to "the rough terrain, the dark, and the hot pursuit [the border guard] stumbled ... as he fired" and thus accidentally wounded Afrim Salla. In the view of the prosecutor the decision to fire was "imperative" given that the Albanians had failed to obey repeated orders to stop and that this operation was intended to lead to the arrest of dangerous arms and drug traffickers. The prosecutor consequently decided to dismiss and archive the case. On 5 September

raising its concerns relating to the cases of Ferhat Çeka, Mulaj. AI also requested details of legal provisions, arms by law enforcement officials on border duties (see

2001 the Appeals' Prosecutor replied that he approved this decision.<sup>136</sup>

Throughout the above report Afrim Salla and his companions are referred to as "illegal immigrants" and there is no mention of any evidence that they were in any way involved in arms or drug smuggling. It is also clear that the border-guard did not fire in self-defence and that he and his colleagues had no specific reason to believe that they were in imminent threat of death or serious injury. The resort to firearms in this incident would consequently appear to contravene international standards for their use.

#### **KRESHNIK SHENAJ, AGED 17**

Kreshnik Shenaj set out from home in Frashtani village (Fier district) on 16 November 2000, together with his brother and two other young men. According to his account:

*"We didn't take this decision lightly, for we had heard that clandestine immigrants are ill-treated if they are caught. But we weren't able to earn enough to live on, so we took the risk ... We were less than two km into Greek territory when we came upon a [border] patrol. It was dark when strong projector lights made us stop. Immediately after the lights came on, there was a burst of gunfire. We threw ourselves to the ground and didn't move until the soldiers approached us. Without saying a word, they began to beat us all over and to swear at us."*

The four young men were taken to a small barracks, where they were allegedly again kicked and beaten. Kreshnik Shenaj further alleged that after he was detained one of the soldiers ordered him: *"If you want to be free, run faster than the dog"*, and pushed him in the direction of a nearby wood. *"Run!" he said, and he fired aiming close to my feet. There was nothing I could do but run.*" A police dog chased after him as he ran off and bit his left leg, releasing him only on the order of a soldier. On 18 November, the four Albanians were reportedly transported to Kakavijë border post. From there Kreshnik Shenaj was taken to hospital in Gjirokastra (Albania) where, reportedly still traumatized, he was interviewed two days later.<sup>137</sup>

#### **BLEDAR QOSHKU -- SHOT AND KILLED BY BORDER GUARDS IN DISPUTED CIRCUMSTANCES**

Bledar Qoshku, aged 23 from Babje village (Librazhd district), was shot dead by Greek border police in the early hours of 1 November 2000. According to Greek police sources, Bledar Qoshku was leading a group of six other men who had paid him to guide them across the border when they were located by a thermal camera. Bledar Qoshku was armed with a Kalashnikov with a sawn-off barrel and a loaded cartridge clip. When he realized that he had been observed, he pointed his gun at the patrol to shoot, but was dazzled by the projector lights directed at him. As a result, he was shot by the patrol before he could fire. Afterwards,

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<sup>136</sup> Documentation made available to AI.

<sup>137</sup> *Koha Jonë*, 21 November 2000

the six other Albanians were taken to Florina for questioning. They were later released and returned to Albania.<sup>138</sup>

This account was disputed in Albanian press reports which cited statements by members of the group who denied that Bledar Qoshku was armed. One of them, Aqif Riza Kurti, reportedly claimed that Bledar Qoshku carried only a bag containing food. Another, Fitim Çelami, reportedly stated: “*The Greek [police officer], although he killed [Bledar Qoshku] by mistake, should not have blamed him and claimed he was carrying arms. We would have seen if he had been carrying a Kalashnikov ... He didn’t have a gun and if he had the Greeks would have shown it to us after they killed him in order to demonstrate they were innocent.*” Aqif Riza Kurti claimed that while being held in police custody in Florina he and other members of the group were beaten by police to make them confess that Bledar Qoshku had a Kalashnikov: “*They showed us all the automatic [Kalashnikov] on a table and then they put us each in a separate cell and beat us to force us to admit that we had seen [Bledar Qoshku] with the automatic.*” He claimed that when brought before an investigating judge they had again denied that Bledar Qoshku had been armed. However, one member of the group, who knew some Greek and had acted as an interpreter, had later told them that the minutes of the hearing incorrectly recorded that they admitted that Bledar Qoshku was armed.<sup>139</sup> At least two of the six men reportedly later gave statements, in which they denied that Bledar Qoshku was armed, to the Tirana District Prosecutor’s Office.<sup>140</sup>

On 14 November 2000 the Prosecutor of Librazhd district initiated proceedings on a charge of murder, at the request of Bledar Qoshku’s father, and subsequently took statements from Fitim Çelami and Aqif Kurti.<sup>141</sup> On 4 April 2001 the Prosecutor requested the Prosecutor’s Office in Florina for access to all the evidence collected on this case, but by the end of July 2002 had reportedly received no reply.<sup>142</sup>

According to the prosecuting authorities in Kastoria, an investigation concluded that when Greek border guards sighted the group they had ordered them in Albanian to halt. Bledar Qoshku, however, pointed the Kalashnikov, which was loaded and primed, at the guards, who shot him in legitimate self-defence. According to this account of the investigation, all six members of the group had testified in Greece that Bledar Qoshku was armed. The case was accordingly dismissed and archived, a decision that was confirmed on 26 January 2001 by the Appeals’ Prosecutor of Western Macedonia.<sup>143</sup>

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<sup>138</sup> *Elefthetotopia*, 2 November 2000.

<sup>139</sup> *Koha Jonë*, 4 November 2000

<sup>140</sup> *Shekulli*, 8 November 2000

<sup>141</sup> Case file no.124 of 14 November 2000.

<sup>142</sup> Information provided by the Albanian prosecuting authorities.

<sup>143</sup> Protocol no: A32/26-1-2001. Information provided by the Prosecutor’s Office of Kastoria in a letter of 18 February 2002 to GHM.

## **C.5. CONCERNS**

### **Deaths and injuries arising out of the contravention, or in some cases the alleged contravention, of international standards for the use of firearms by law enforcement officials**

In the above incidents law enforcement officials used, or in some cases are alleged to have used, firearms in contravention of international standards which limit their use to situations involving imminent threat of death or serious injury and when other means are insufficient. The above cases do not represent an exhaustive list of such incidents: there have been other instances of the apparently reckless or incompetent use of firearms.

### **A pattern of excessive use of force by law enforcement officials against Roma and foreign nationals**

Following the shooting and death of Gentjan Çelniku, the Minister of Press and Mass Media conceded that it could not be excluded that racial prejudice might exist amongst the police, as in other sections of society.<sup>144</sup> There are no published official statistics which document the ethnic origin or nationality of victims of the use of firearms by police and it is difficult therefore to draw any definite conclusions as to the extent to which such prejudice has played a part. However, as has previously been noted, a pattern of excessive use of force by law enforcement officials against Roma and non-Greek nationals has been widely observed, and against this background it is a matter of concern that in cases which have come to the attention of AI/IHF the victims of unlawful -- or allegedly unlawful -- use of arms by law enforcement officials have predominantly been foreign nationals or Roma.

### **Concerns relating to the professional training and equipment of law enforcement officials and the enforcement of discipline**

As has been seen, the quality of professional training offered to law enforcement officials in Greece has been criticized from within the ranks of the police. While repeated claims that guns "fired accidentally" may not be valid, certain cases -- such as that of police officer Dimitris Trimmis -- appear to confirm that training in handling weapons and in risk assessment is inadequate. The importance of appropriate and effective training is emphasized in Principle 19 of the Basic Principles on Force and Firearms, which states:

*"Governments and law enforcement agencies shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms should be authorized to do so only upon completion of special training in their use."*<sup>145</sup>

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<sup>144</sup> *Macedonian Press Agency*, 23 November 2001.

<sup>145</sup> See also Basic Principle 20: "...Law enforcement agencies should review their training programmes and operational procedures in the light of particular incidents."

It is to be hoped that forthcoming legislation dealing with the use of firearms by police and with police training will effectively address these problems. Its implementation will necessarily require careful review.

As noted earlier, in March 2000 a senior official of the Union of Police Employees of Thessaloniki is reported to have complained that the firearms issued to police officers were obsolete and unsafe.<sup>146</sup> If this observation is still valid, it highlights a problem that needs urgently to be addressed.

Another issue concerns the enforcement of discipline within the ranks of the police. In several of the incidents outlined above it has been reported that the police officer was operating in contravention of patrol regulations or in breach of a superior's orders. It was also a breach of discipline, and a contravention of international standards, when the officer responsible for the critical injury of Stephanos Sapounas failed to promptly report the use of firearms to his superiors (see section C.3). The same officer's failure to ensure, at the earliest possible moment, assistance and medical aid to Stephanos Sapounas and to notify his relatives, similarly contravened international standards.<sup>147</sup>

### **Concerns related to border-policing**

Further concerns relate to the use of firearms by law enforcement officials in the context of border-policing. The case of Afrim Salla, and some earlier apparently similar incidents, suggest that instructions given to law enforcement officials on border duties may permit, or that practice condones, the use of firearms ("firing in the air") as a means to repel people seeking to enter Greece clandestinely, even in circumstances in which the latter do not necessarily present an imminent threat of death or serious injury. The dangers of using firearms in this way, particularly in the dark, are tragically illustrated by the case of Afrim Salla. Given the undoubted difficulties and dangers of border-guarding, it is worrying that such duties should in part be entrusted to military conscripts, generally young and inexperienced men with limited training.

The UN Code of Conduct for Law Enforcement Officials, states (Article 3): "Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty." Commentary c) to this article states: "*The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender* [emphasis added]."<sup>148</sup> In the cases of Ferhat Çeka, Afrim Salla and Kreshnik Shenaj (the latter two were reportedly under 18 years old), there is no indication, from the information available, that they had in any way offered armed resistance or jeopardized the lives of others.

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<sup>146</sup> *Eleftherotypia*, 28 March 2000.

<sup>147</sup> See Basic Principles 6 and 5 (c) and (d).

<sup>148</sup> The Code of Conduct for Law Enforcement Officials was adopted by the UN General Assembly in 1979.

Other concerns relating to the investigation and prosecution of law enforcement officials in connection with deaths or injuries arising out of their use of firearms are examined in the following section.

## D. OBSTACLES TO JUSTICE

“Human rights violations by the administration can be summed up in four words: arbitrariness - indifference - bias - impunity; they take their most acute form when applied to vulnerable social groups. It has been observed that the administration often arbitrarily invokes the public interest as an excuse to restrict individual rights, and illegally remains inactive when there is a constitutional obligation to protect human rights.”<sup>149</sup>

### D.1. FAILURE TO ENSURE PROMPT, THOROUGH AND IMPARTIAL INVESTIGATIONS

As documented in sections B and C of this report, judicial investigations into allegations of torture and ill-treatment and into incidents of death or injury arising out of the use of firearms by law enforcement officials are rarely carried out and concluded promptly. A failure to ensure promptness, and sometimes thoroughness, can call into question the impartiality of some investigations. Thoroughness and impartiality are also undermined when investigations fail to ensure that the alleged victim or witnesses are provided, where necessary, with professional interpreters (as has been alleged by Ferhat Çeka and Albanian eyewitnesses to the shooting of Bledar Qoshku). Moreover, in some cases the competent authorities disregard their legal obligations and take no action to investigate complaints of torture or ill-treatment.

As a state party to the Convention against Torture Greece is obliged to ensure that “...its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction” (Article 12).

The UN Principles on the Effective Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) further require *inter alia* that alleged victims of torture or ill-treatment and their legal representatives be informed of, and have access to, any hearing as well as to all information relevant to the investigation, and be entitled to present other evidence, and that the findings and methods of the investigation be made public.<sup>150</sup>

Similarly, “a prompt, thorough and impartial investigation” is a requirement under the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, which apply also to situations where death results from “*excessive or*

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<sup>149</sup> The Ombudsman’s Annual Report 1999, p.15.

<sup>150</sup> Istanbul Protocol. Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Professional Training Series No.8. Geneva: United Nations, 2001.

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*illegal use of force by a public official*".<sup>151</sup> These Principles additionally stipulate that: "Families of the deceased and their legal representatives shall be informed of, and have access to, any hearing as well as to all information relevant to the investigation ..." and that: "A written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate the evidence as well as conclusions and recommendations based on findings of fact and on applicable law."

The essential features of an investigation under Article 2 of the European Convention on Human Rights (guaranteeing the right to life) have been outlined by the European Court of Human Rights in a case decided in May 2001 regarding a disputed killing in Northern Ireland: the Court ruled that an investigation must be independent, effective, reasonably prompt, capable of public scrutiny, and capable of involving the next of kin of the deceased to the appropriate extent.<sup>152</sup>

### **D.1.1. Disciplinary Proceedings - the Sworn Administrative Inquiry**

As stated earlier, police officers alleged to be responsible for torture or ill-treatment or charged in connection with other grave offences (such as unlawful killings) may be subject to a form of internal police inquiry, known as the Sworn Administrative Inquiry, within the framework of disciplinary proceedings. Presidential Decree 22/1996 (dealing with disciplinary law for police personnel) sets out in Article 27 the relevant procedures.

Briefly, the Sworn Administrative Inquiry is entrusted to a single police officer, who must be superior in rank to the officer under investigation. Evidence is taken under oath and its proceedings are confidential. At the end of the inquiry, the officer in charge draws up a report with a summary and assessment of the evidence, his/her conclusions and a recommendation (proposal) as regards any sanction to be imposed. The report is submitted to his/her superiors for review before being forwarded to the authority competent to make a decision (the Minister of Public Order if the "accused" is a senior police officer, and the Chief of Police in other cases). This authority is not bound by the conclusions of the report. If the authority concludes that the officer has committed a breach of discipline punishable by dismissal, the case is referred to a Disciplinary Board, consisting of five members of the police force, which gives a final ruling. Torture and ill-treatment are among the breaches of discipline punished by dismissal.<sup>153</sup>

The Sworn Administrative Inquiry procedure applies to many forms of disciplinary violation (for example, lack of respect for the Constitution, refusal to carry out a superior's orders, drunkenness on duty), and it is clear from its provisions that it was not drafted

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<sup>151</sup>The UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions adopted by the UN Economic and Social Council and annexed to Resolution 1989/65.

<sup>152</sup>*Jordan v UK*, 2001.

<sup>153</sup>Under Article 9(1c) of Presidential Decree 22/1996: "The infliction of torture, any physical injury or damage to health, the exercise of psychological violence and any other act or conduct which constitutes a serious offence against human dignity, whether [perpetrated] on or off duty" is punished by dismissal from the [police] service.

primarily to deal with complaints by the public -- although it gives precedence to the investigation of such cases. The safeguards it contains aim to protect the rights of the officer under investigation, rather than those of the complainant or the complainant's family. They include provisions to ensure the impartiality of the investigating officer; they also guarantee the right of the "accused" officer to nominate witnesses, to request a postponement of proceedings or the exclusion of the investigating officer, as well as the right of access to the evidence, and the right of appeal. At all stages of disciplinary proceedings the officer under investigation may have legal counsel present.<sup>154</sup> By contrast, there are no provisions setting out the rights of the complainant, who has thus no formal means of influencing the choice of witnesses and evidence examined, this being left to the discretion of the investigating officer. Additionally, the complainant does not have right of access to the hearings, and cannot appeal against the inquiry's findings.

This procedure cannot be said to guarantee impartiality, independence and thoroughness, and has been criticized. The following is an example cited in the Greek Ombudsman's *Annual Report 1999*. It concerned an administrative inquiry into allegations of ill-treatment made by a French citizen:

*"The inquiry took place immediately and concluded that there had been no improper conduct on the part of the police officers involved in the case. However, the Ombudsman found that during the inquiry the allegations were not investigated in detail and the conclusions were neither complete nor reasoned. Specifically it was found that the people conducting the inquiry adopted without reservation in their conclusions the testimonies of the police officers in question without giving due consideration to the contrary testimonies of the complainant and the witnesses, while some of the reported events were not investigated at all."*<sup>155</sup>

A more general and damning conclusion was reached in the Ombudsman's report for 2000: *"The Ombudsman is not convinced that the administrative inquiries carried out by the Greek police on the Ombudsman's initiative to establish whether law enforcement officials have committed offences during the arrest of people, their transfer to, and detention in, a police station, are effective."*<sup>156</sup> The report noted that administrative inquiries into more serious complaints against police officers *"invariably come to the hackneyed and laconic conclusion that 'the activities and conduct of the police officers ... were irreproachable and in accordance with the rules and regulations of the Force'"*.<sup>157</sup>

In view of the fact that the dossier of the administrative inquiry is likely to form part of the evidence in any judicial proceedings, any defects of the inquiry can potentially influence a court verdict. A revision of the Sworn Administrative Inquiry procedure which

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<sup>154</sup> Article 10 (2) of Law 2713/1999.

<sup>155</sup> *Annual Report 1999*, p.78.

<sup>156</sup> *Annual report 2000*, p.52.

<sup>157</sup> There have nonetheless been exceptions to this rule. In the case of police officer Athanasios Ziogas, for example (see section C.3), the administrative inquiry, which concluded that he had committed reckless homicide, viewed his actions more critically than the judiciary, which found him guilty of the lesser offence of manslaughter.

would ensure greater impartiality, independence and transparency, and greater protection of the rights of the complainant, would thus not only enhance the credibility and efficacy of disciplinary proceedings, but might also benefit judicial proceedings.

There are also concerns relating to the measures and sanctions provided for under disciplinary proceedings. In the view of AI/IHF police officers under investigation for torture or unlawful killing should be suspended from active duty pending the outcome of disciplinary or judicial proceedings against them. Under Article 14 (1) of Presidential Decree 22/1996 police officers *may* be suspended from service if they are charged with a criminal offence punishable by at least three months' imprisonment, or are subject to a Sworn Administrative Inquiry for a disciplinary violation punishable with dismissal or two to six months' suspension from service. Suspension from service pending the inquiry is only *mandatory* for officers serving prison sentences, or who have been remanded in pre-trial custody or released on bail or subject to restrictive conditions (Article 14 (2)).

In practice, police officers charged with reckless homicide or with torture or other ill-treatment, or subject to a Sworn Administrative Inquiry in connection with these offences, have quite frequently not been suspended from service. In the case of Lazaros Bekos and Eleftherios Koutropoulos the police officers remained in active service in the same area and it has been alleged that they, or colleagues, attempted to dissuade the two youths from pressing charges against them. Even when the most serious charges have been brought against police officers they have not necessarily been suspended pending investigation -- for example, the officers charged with reckless homicide in connection with the deaths of Marinos Christopoulos and Gentjan Çelniku were not suspended from service.

The case of Marinos Christopoulos gave rise in November and December 2001 to an exchange of correspondence between the Greek police authorities and the Ombudsman concerning the correct interpretation of Article 14 (2). The latter argued for an interpretation entailing the mandatory suspension of the officer concerned, who had been released on bail following arrest. The police authorities, on the contrary, argued that Article 14 (2) applied to officers who had been released (on bail or subject to restrictive conditions) from prison or pre-trial custody. In the case in question, the officer had not been imprisoned or remanded in custody, and consequently Article 14 (1) was applicable and suspension was discretionary. The Ombudsman replied that he maintained his interpretation, but that although the view of the police authorities was disputable, it did not constitute *per se* an abuse of the discretionary powers granted to the police authorities. AI/IHF note, however, that the use of these discretionary powers appears to lack consistency. For example, in November 2001 a police officer accused of selling a small amount (1.5 grams) of hashish was reportedly suspended from duty.<sup>158</sup>

A further point concerns the sanctions imposed on police officers after the report and recommendations of the administrative inquiry have been submitted for review and, in some cases, referred to a Disciplinary Board. The available information indicates that in the course of these procedures the original conclusions and recommendations of the administrative inquiry are liable to be considerably modified and "diluted" (as in the case of the

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<sup>158</sup>*Macedonian Press Agency*, 16 November 2001

administrative inquiry into the ill-treatment of Lazaros Bekos and Eleftherios Koutropoulos). In cases known to AI/IHF the sanctions finally imposed on police officers have been at most a fine, temporary suspension from service or demotion. The deterrent effect of such punishments is doubtful.

### **D.1.2. Failure to institute judicial investigations into complaints of torture or ill-treatment**

“Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly... abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences.”<sup>159</sup>

Under Greek law, public officials, including members of the judiciary, who receive information that a punishable act has been committed, are required to notify without delay a competent public prosecutor.<sup>160</sup> As stated earlier, prosecutors are required by law to institute criminal proceedings upon receiving a report, complaint or any information that a punishable act has been committed. A prosecutor may close a case only if he or she concludes that the complaint is not founded in law or that it is obviously false; the complainant is entitled to appeal against such a decision.

However, in practice the relevant legal provisions are often not implemented, or are implemented only with delay, when a detainee complains of police ill-treatment. Following its visit to Greece in September 2001, the CPT reportedly noted that prosecutors and judicial authorities frequently showed little interest when a detainee complained of ill-treatment. The CPT is also reported to have specifically recommended, following this visit, that these authorities should ensure a forensic medical examination of the alleged victim and carry out a thorough investigation of the complaint.<sup>161</sup>

In the following case a prosecutor, on learning of an allegation of ill-treatment, did not promptly order an investigation, although this is required by law, and did not request an investigating judge to order a forensic medical examination of the alleged victim. Subsequently, an investigating judge reportedly failed to respond to the complainant's explicit written request for a forensic medical examination.

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<sup>159</sup> Article 15 of the *UN Guidelines on the Role of Prosecutors*, adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, September 1990.

<sup>160</sup> Article 37 CCP.

<sup>161</sup> *Eleftherotypia*, 23 June 2002.

### ARNESTO NESTO

On 15 April 2002 Arnesto Nesto, an unauthorized immigrant from Albania, was pursued by police near Megara (west of Athens), after he ignored their signal to pull over. In the course of the pursuit, he and another young man who was with him abandoned their car and fled on foot. According to Arnesto Nesto, as police officers approached him he fired a gun in the air, in order to distract their attention from his friend and enable the latter to escape. Arnesto Nesto was subsequently accused of having fired several times at the police during their pursuit.

In a written statement Arnesto Nesto later alleged that immediately after his arrest police officers handcuffed his hands behind his back and proceeded to beat him all over his body before dragging him into a police van. He was then taken to Megara Police Station, where police officers allegedly punched, kicked and beat him with a truncheon on his face, body, hands and feet, causing him injuries. Neither an interpreter nor a lawyer was present at his interrogation at the police station, during which he was questioned also about other offences which he denies having committed.<sup>162</sup> He further alleged that following his arrest he was denied water for 24 hours, food for 48 hours and that his requests to be examined by a doctor were refused.

On 18 April 2002 Arnesto Nesto was brought before a prosecutor in Athens to whom he allegedly showed his injuries and complained of the ill-treatment he had suffered. The prosecutor did not order an investigation into these allegations, although required to do so by law, or request a court order for his forensic examination.

The same day Arnesto Nesto was also brought before an investigating judge of the 9th Investigations Department of the Court of Misdemeanours of Athens. An interpreter and a lawyer were present on this occasion. His lawyer subsequently informed AI that Arnesto Nesto's injuries were plainly visible: he had bruises on his face, hands and feet, and his clothes were blood-stained. The written record of this hearing states that Arnesto Nesto told the investigating judge: *“At Megara police station, they beat me, they beat me, they beat me and I didn't open my mouth. They beat me before I gave a statement and when I gave it. When I say that I didn't open my mouth I mean that the police officers were forcing me to say things which I hadn't done.”*<sup>163</sup>

Arnesto Nesto also presented to the investigating judge a written statement in which he declared: *“During my arrest on 15 April, and afterwards, I was ill-treated by police officers, so that I would confess to offences which I had not committed, and sign the records of my interrogation drawn up on 16 April and possibly other documents of whose contents I am ignorant, since I do not understand Greek and an interpreter was not provided. Apart from the psychological pressure, I sustained severe physical injuries to my face, which you may readily confirm, and other parts of my body. I hereby request that you refer me to the*

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<sup>162</sup> Arnesto Nesto has been charged with attempted murder, robbery, unlawful possession and use of arms, entering Greece illegally, driving a car without a license and failing to obey police orders to stop the car he was driving.

<sup>163</sup> Under Article 177 (2) CCP evidence obtained by unlawful methods is inadmissible in court.

*competent forensic medical expert for examination.*” The investigating judge did not respond to this request. She also reportedly failed to report Arnesto Nesto’s complaint to the prosecutor, as required by law. Arnesto Nesto was remanded in custody and subsequently transferred to Korydallos prison, Athens. Articles 20 (1) and 10 (1) of the Greek Constitution guarantee the right to address requests to the authorities (including the judiciary) and to receive a reasoned answer. Two months later his lawyer informed AI that the investigating judge had still not responded to Arnesto Nesto’s request for forensic examination, and no investigation had been started into his complaint.<sup>164</sup>

### **D.1.3. Restricted access to forensic medical examination**

The case of Arnesto Nesto highlights one of the main obstacles in the path of victims of torture or ill-treatment who seek to support their allegations with medical evidence -- one of the strongest forms of evidence which they can present in court. At times -- if the ill-treatment has taken place in isolation, without witnesses, or if the investigation has not been sufficiently thorough -- it may be the only corroborative evidence available to the victim. However, under Greek law individuals do not have direct access to examination by state forensic services. Such an examination can only be obtained by order of investigating officials or a court, usually on the basis of a request by a victim who has filed a complaint of ill-treatment, or a request of the public prosecutor.<sup>165</sup> Some injuries caused by ill-treatment, such as bruising, heal relatively quickly; consequently any failure on the part of the competent authorities to ensure prompt forensic examination may effectively result in the complete or partial loss of crucial evidence.<sup>166</sup>

In 1993, and again in 1997, the CPT expressed its concern that under Greek law people alleging ill-treatment did not have direct access to forensic examination. Its report on its visit to Greece in 1997 reiterated its previous recommendation that “*State forensic services ... be authorised to accept requests for medical examinations presented to them directly by persons who allege ill-treatment, or by their doctor or lawyer*”.<sup>167</sup>

The authorities have so far been unwilling to implement this recommendation. In a response to the CPT, the Ministry of Public Order claimed it was unnecessary, since the investigating judge was obliged to order a forensic medical examination if a person filed a complaint alleging ill-treatment. The Ministry further noted that a person alleging ill-treatment had the right, without previously filing a complaint, to obtain independently a medical examination and report from a public hospital or private doctor, and that this

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<sup>164</sup>Principle 6 of the UN Basic Principles on the Independence of the Judiciary states: "The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected."

<sup>165</sup> Article 183 CCP.

<sup>166</sup>Cf. the *UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, paragraph 103, which notes that “the timeliness of such medical examination [of the alleged victim] is particularly important”.

<sup>167</sup>CPT/Inf (2001) 18, paragraph 19.

constituted evidence which was assessed, along with other evidence, during the investigation proceedings.<sup>168</sup>

It should be noted, however, that the assessment and documentation of torture-related injuries is a very specific expertise, requiring the skills of a forensic specialist. Hospital doctors or private practitioners are unlikely to have acquired these skills. (Even prison doctors, who according to the Greek delegation to the UN Committee against Torture are "deemed to be experts knowledgeable on the subject of torture" reportedly receive no training in the identification of injuries inflicted by torture or ill-treatment.)<sup>169</sup>

Even when an authorized forensic medical examination is duly carried out, the resulting report is liable to omit significant information. As the CPT has noted, in Greece forensic medical reports "*lack an account of the examined person's statements which are relevant to the medical examination*". The CPT once again urged that all medical certificates drawn up after a forensic examination contain: (i) a full account of statements made by the person concerned which are relevant to the medical examination (including a description of the person's state of health and any allegations of ill-treatment), ii) a full account of objective medical findings based on a thorough examination, and (iii) the doctor's conclusions in the light of (i) and (ii).<sup>170</sup> This recommendation has also not yet been implemented.

#### **D.1.4. Police "solidarity"**

Corporate solidarity exists in all professions and has many positive aspects. However, a misguided sense of solidarity sometimes leads members of a profession to close ranks when a colleague is exposed to what may be justified public criticism. This report has earlier cited senior police officials, police trade unions, or colleagues who have attempted to pre-empt criticism, or to absolve officers from accusations of misconduct, well before the facts have been established by administrative or judicial investigations. The following is one such case.

In July 2001 **Andreas Mermingousis**, the owner of a taverna, and his son Matthaïos filed a complaint with the prosecuting authorities on the island of Chios against three named police officers. According to this complaint, on the night of 30 April to 1 May 2001, a group of police officers threatened to have the taverna closed on the grounds that they had been playing music too loudly. When Matthaïos protested, two officers allegedly grabbed him and banged his head against the wall, causing him injuries for which he was later to receive stitches. Andreas Mermingousis intervened, and was then himself taken to the local police station, where another police officer is alleged to have knocked him to the ground (he was handcuffed at the time) and then proceeded to kick him and hit him with a truncheon. About two hours later, Andreas Mermingousis was taken to the General Prefectural Hospital where he remained until 3 May 2001. A discharge certificate issued by the hospital records injuries to the stomach and lumbar region, bruising on his back and the shins of his legs, and notes that he complained of having been beaten.

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<sup>168</sup>CPT/Inf (2001) 19, p.78.

<sup>169</sup>Summary record of the CAT session of 3 May 2001 (CAT/C/SR.463)

<sup>170</sup>CPT/Inf (2001) 18, paragraph 19.

Police sources, however, reportedly claimed that Andreas Meringousis' injuries were self-inflicted. "As he was under the influence of alcohol, we locked him in a cell. Then, in a fury, he started banging his back against the cell bars, yelling and swearing, and the bruises were the result."<sup>171</sup> This explanation not only failed to account for the injuries to his stomach and legs, but also preceded full investigation of the incident.

More seriously, a misguided sense of solidarity can also result in police failing to cooperate fully with investigating officials in the identification of those responsible for ill-treatment, as for example, in the case of Refat Tafili (see section B.5). Too often, in fact, it seems that the responsibility for this identification is left very largely to the victim. It is, for example, questionable whether the officer who assaulted Melpo Koronaïou would have been identified and successfully prosecuted but for the fact that the incident was photographed by a journalist and witnessed by lawyers -- an exceptional combination of circumstances (see section D.2). Even so, the police officer who conducted the administrative inquiry appears to have been reluctant to take evidence from an eyewitness (a lawyer), despite the latter's insistence. Few victims of ill-treatment can hope to produce evidence of this standard to support their allegations, but in its absence investigating officials may well find their efforts to identify the perpetrators hindered by a lack of police cooperation, as reported in the following case.

#### **YANNIS CHRISTAKIS**

On the evening of 31 January 2001, fans of two Greek football teams, Aris and PAOK, confronted each other at a street corner in Thessaloniki after a match and exchanged insults. Police forces escorting the two groups intervened with truncheons. An Aris supporter, Yannis Christakis, a 17-year-old high-school student, was chased by police, and tried to escape by hiding behind a car.

According to a criminal complaint which Yannis Christakis filed on 15 February 2001, three unidentified riot police (members of the YAT force) knocked him to the ground, struck him on the head with a truncheon, kicked him as he lay prone, and then moved on.<sup>172</sup> Although dazed, he picked himself up and rejoined his friends. However, a few hours later, at about 1am on 1 February, he was urgently admitted to the intensive care unit of the "G.Papanikolaou" General Prefectural Hospital where he was found to have a craniocerebral injury and was operated on the same day. He remained in hospital for 16 days, 11 of them in intensive care.

A medical certificate issued by the hospital recorded that Yannis Christakis was admitted with injuries to his skull and brain. A report by a forensic medical specialist of the Aristotle University of Thessaloniki concluded that these injuries had been inflicted by a heavy blunt instrument.<sup>173</sup>

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<sup>171</sup> *Eleftherotypia*, 15 May 2001.

<sup>172</sup> YAT - Special Branch for Restoring Order.

<sup>173</sup> Information on this case, other than that obtained from press reports, is based on documentation provided to GHM by legal counsel acting for Yannis Christakis.

The Minister of Public Order was reported to have condemned this incident, calling it a “barbaric practice that has nothing to do with the spirit of a modern police force”.<sup>174</sup> However, the Chief of Police of Thessaloniki, although expressing sympathy for Yannis Christakis and his family, appeared to seek excuses for the officers: “... police are probably acting under psychological pressure.”<sup>175</sup>

An administrative inquiry and a judicial investigation were opened. Statements taken from a number of eye-witnesses in most respects confirmed Yannis Christakis’ account. However, the incident had taken place in the dark, in a poorly lit street, and there were some inconsistencies in the description of the colour of the uniform and the equipment carried by the police officers who had assaulted Yannis Christakis. Yannis Christakis’ own statements varied on this point, although he consistently described the police officer who kicked him as wearing plastic greaves (reportedly worn by YAT officers). However, the members of the YAT squad who had taken part in the operation testified that they had seen and heard nothing. A senior police officer reportedly commented that the officer responsible for injuring Yannis Christakis was possibly unaware “in the tension and stress of the moment” of what he had done, and attributed the incident to a “loss of self-control” on the part of the officer.<sup>176</sup>

Nonetheless, on 23 February 2001 the press reported that criminal proceedings had started against two YAT officers on charges of “jointly and intentionally inflicting severe bodily injury” on Yannis Christakis; an investigation was continuing in order to identify a third officer. The press report noted: “*The investigation was particularly difficult since the squad, who accompanied the football fans and finally clashed with them, were ‘bonded’ beyond the call of duty. [They] gave hardly any assistance to the prosecutor, which is problematic, since they were eyewitnesses to the brutal beating of the youth.*”<sup>177</sup> According to the testimony of several eye-witnesses, at least one police officer witnessed the incident; however this officer subsequently failed to come forward and testify against his colleagues.

Although administrative and judicial investigations are in principle independent of each other, by the end of April 2001 the administrative inquiry had been suspended (because of the conflicting testimony of police officers and other witnesses), pending a decision of the judicial council with regard to criminal proceedings in the case.

On 10 May 2002 the public prosecutor presented the case against the two police officers to the Judicial Council of the Court of Misdemeanours of Thessaloniki. In her summary of the incident she stated that three police officers had beaten and kicked Yannis Christakis “until they were noticed by a colleague ... who, when he saw what was happening, shouted to them to stop”. Further, she stated: “Thus, apart from the police officer who saw his colleagues beat Yannis Christakis and who shouted to them to stop -- whose identity to this day remains unknown, and who has not ... testified, -- the other police officers did not notice the incident, but as all those who were examined stated, they learned of it the following day.” Noting the inconsistencies in the testimonies of Yannis Christakis and witnesses, she

<sup>174</sup> *Kathimerini*, Athens (English edition), 3 February 2001

<sup>175</sup> *Eleftherotypia*, 3 February 2001.

<sup>176</sup> *Eleftherotypia*, 5 February 2001.

<sup>177</sup> *Eleftherotypia*, 23 February 2001.

concluded that there was no secure evidence against the two police officers and proposed that they should not be indicted and referred for trial. On 12 June 2002 the Judicial Council of the Court of Misdemeanours of Thessaloniki accepted this proposal. Yannis Christakis has the right to appeal against this ruling. He has filed a claim for compensation for material damages with an administrative court.

## D.2. UNDULY PROTRACTED LEGAL PROCEEDINGS

The Greek judicial system suffers from a chronic lack of personnel and poor material conditions. The courts are overburdened and, as has been seen, it can take several years or more to bring a case to trial, and necessarily even longer to reach an irreversible court decision. For example, it took over five years before police officers responsible for the deaths of Anastasios Mouratis and Stephanos Sapounas were brought to trial in first instance, and almost six years for a court decision to be reached in second instance in the case of the police officers alleged to have ill-treated Paraskevas Tranteros and Dimosthenes Argyroudīs.

Under Article 13 of the Convention against Torture: “*Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities*”. In 1997 the Committee against Torture, commenting on another country (Spain), stated that long delays in legal proceedings relating to torture, both at the investigation and trial stages, were “completely incompatible with the promptness required by Article 13 of the Convention [against Torture].”<sup>178</sup> Such delays are also liable to constitute a violation of Article 6(1) of the European Convention on Human Rights which stipulates: “*In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law*”.

Further, unduly protracted legal proceedings may in some cases entail the risk of the expiry of the applicable statute of limitation and consequent impunity for the perpetrator, thus denying the victim, or the victim’s family, their right to an effective remedy, as provided for under Article 2 of the ICCPR.<sup>179</sup>

A combination of unusual circumstances ensured that in the following case criminal proceedings against a police officer led to his conviction. Nonetheless, the extremely protracted judicial proceedings and the nominal sentence imposed on appeal -- a suspended prison sentence -- deprived this trial and the officer’s conviction of much of its exemplary or deterrent effect.

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<sup>178</sup>Concluding observations of the Committee against Torture : Spain. 27/11/97. A/53/44, paragraph 127.

<sup>179</sup>Article 2(3) of the ICCPR: “Each State Party to the present Covenant undertakes: (a) To ensure that any persons who rights or freedoms herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.”

### MELPO KORONAIYOU

On the evening of 14 April 1995 left-wing groups in Athens held a demonstration in protest about an incident in which two young men had been knifed and wounded by an alleged far-right extremist a few days earlier. The demonstration ended in clashes between demonstrators and anti-riot police; at least eight demonstrators later required hospital treatment. Several police officers were also reported to have been injured.

At about 7.15pm Melpo Koronaïou, a worker and trade unionist, who was at the rear of the demonstration, was suddenly surrounded in Patisision Street by several uniformed riot police and one plainclothes police officer (the latter was off duty at the time). According to the complaint she later filed:

*“... Despite the fact that I was alone, unarmed and that my back was turned towards them, the police officers ... attacked me violently without any reason. They surrounded me and started to kick me and beat me with truncheons all over my body until I collapsed on the pavement. Even then they did not stop -- on the contrary, [the plainclothes officer] continued with even greater violence to kick my head and face despite the fact that I was completely defenceless and overpowered.”*

Melpo Koronaïou further alleged that the other police officers standing round her made no attempt to restrain their colleague, who left her only when he saw that blood from her mouth and other injuries was seeping onto the pavement. She remained there, unconscious and bleeding, for some 40 minutes until an ambulance arrived.

Photographs of this incident were published in the press on 18 and 19 April 1995. These, together with the testimony of two lawyers who had observed the incident from the balcony of their office, subsequently led to criminal proceedings being started against the plainclothes police officer, Vasilis Athanasopoulos.

The doctors who examined Melpo Koronaïou recorded bruises on her face and various parts of her body and a triple fracture of the jawbones and chin for which she underwent a three-hour operation on 17 April 1995. As a result of these injuries Melpo Koronaïou was unable to speak for two weeks. For almost a year afterwards she continued to experience difficulties in eating and speaking.

On 20 April the Minister of Public Order ordered an administrative inquiry and Vasilis Athanasopoulos was temporarily suspended from service. In the course of the inquiry 40 people testified, all but two of them police officers. The two were Melpo Koronaïou herself, while still in hospital, and one of the lawyers who had seen the incident, whose repeated telephone calls eventually persuaded the officer in charge of the inquiry to take her statement. Her colleague was reportedly not called to testify, nor, it appears, were any of the numerous other witnesses -- demonstrators and journalists -- present at the scene.

The administrative inquiry was completed on 3 May 1995. Although on 15 May 1995 Melpo Koronaïou's lawyers requested access to the case file and the inquiry's findings, reportedly neither the statements of those questioned, nor the forensic medical report compiled in the course of the inquiry were ever made available to her lawyers.

It was only in February 1998 that her lawyers received, via the Prosecutor's Office, the conclusion of the officer in charge of the inquiry; this document reportedly listed only the witnesses and documents examined and concluded: "*The police officer is pictured [in photographs] attempting, or having attempted, to kick the injured party, without proving, however, that he did so.*" In view of the fact that Vasilis Athanasopoulos' actions had "*given rise to unfavourable comments against him, the Service and the Police Force generally*" the officer recommended his suspension from service for three months. (It is not clear whether this recommendation was accepted or indeed whether Vasilis Athanasopoulos was ever given a disciplinary punishment.) Later, at his trial, Vasilis Athanasopoulos reportedly stated: "*The deputy commander, who carried out the inquiry, said that he had to give me a punishment or there would be a public outcry.*" Vasilis Athanasopoulos is subsequently said to have been promoted.

Melpo Koronaïou lodged a criminal complaint on 1 June 1995 against Vasilis Athanasopoulos, whom she accused of causing her grievous bodily injury, and against other, unnamed, officers who had also assaulted her. The prosecuting authorities were slow to act: the preliminary investigation was opened only in January 1996; it was completed in May that year. It did not succeed in identifying any other police officer involved in the ill-treatment of Melpo Koronaïou.

The first pre-trial hearing was delayed until 13 March 1997, to be followed by numerous further delays and postponements. The case finally came to trial before the Three-Member Misdemeanours' Court of Athens on 25 October 1999. Vasilis Athanasopoulos denied the charges against him and reportedly claimed that on the day in question he had been passing by chance. He argued that the photograph had been misinterpreted: his foot was raised because he was "trying to pass in front of her and fell on her". The court, however, convicted him of having, together with other (unidentified) persons, caused dangerous bodily injury to Melpo Koronaïou, under Articles 308 and 309 CC. He was sentenced to two and a half years' imprisonment, but remained at liberty pending appeal. The published photographs, and the testimony of the two lawyers who had witnessed the incident, were crucial in securing this conviction.

Two years later, on 10 October 2001, the Three-Member Appeals' Court of Athens heard Vasilis Athanasopoulos' appeal. The court confirmed his guilt, but reduced his sentence to 15 months' imprisonment, suspended for three years, on the grounds of previous good behaviour. Melpo Koronaïou filed a civil suit for damages which was reportedly due to be adjudicated by a civil court on 19 September 2002, over seven years after her injuries were inflicted.<sup>180</sup>

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<sup>180</sup> Information based on Melpo Koronaïou's criminal complaint, an interview by AI with her lawyer, who provided subsequent information, and press articles. See also *Greece: Ill-treatment of Melpo Koronaïou by police officers* (AI Index: EUR 25/08/1996).

### D.3. OBSTACLES TO REPARATION

#### The rights of the victim in judicial proceedings and the right to compensation<sup>181</sup>

Under Article 14 of the Convention against Torture “Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation.”

Principle 20 of the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions states: “The families and dependents of victims of extra-legal, arbitrary and summary executions shall be entitled to fair and adequate compensation, *within a reasonable period of time* [emphasis added].”

In theory, Greek law accords the internationally guaranteed right to compensation. In the case of injury sustained as a result of illegal actions committed by a police officer or other state official while on duty the victim has the right to claim compensation from the state.<sup>182</sup>

However, a number of obstacles severely limit this right in practice. The victim’s chances of successfully pursuing a claim for compensation are poor if he or she cannot produce as evidence a decision issued by a criminal court convicting the alleged perpetrator. The role of the complainant in criminal proceedings, however, is essentially that of a witness, and he or she cannot be assured that a prosecutor will forcefully pursue the case against the defendant. As has been noted: “... *public prosecutors in Greece have under the Constitution the same status of personal independence as judges. Although their functional independence is limited by the principles of hierarchical subordination, their mentality is that of an independent member of the judiciary rather than of a partisan lawyer. Therefore, usually they remain objective and detached during the proceedings, they do not show much zeal in pursuing the conviction of the accused, and they often propose to the court his/her acquittal. Furthermore, public prosecutors, due to their heavy case-load, do not have the time to prepare the cases with the same diligence as a counsel of the defendant or of the civil claimant would.*”<sup>183</sup>

In order to acquire greater rights in criminal proceedings, including the right to be represented in court by a lawyer, and the right to appeal against decisions of the judicial council, victims are therefore effectively obliged to join criminal proceedings as civil claimants by filing a suit for compensation for (material) damages and/or pecuniary satisfaction (for moral damage). This procedure in practice (and in some cases *de jure*) requires the services of a lawyer -- for which in almost all cases the civil claimant must pay.

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<sup>181</sup> "Victim" in this section refers both to victims of torture and ill-treatment and to families and dependents of persons who have died as the result of torture or ill-treatment or the unlawful use of firearms by law enforcement officials.

<sup>182</sup> Article 105 of the Civil Code Introductory Law.

<sup>183</sup> D.Spinellis, 'Victims of Crime and the Criminal Process', *Israel Law Review*, Vol.31, No.1-3, 1997, p.370.

At the time of writing this report legal aid, in the form of a court-appointed lawyer, is generally available only to defendants in criminal proceedings and even then, as the NCHR has pointed out, the system does not work satisfactorily in practice.<sup>184</sup>

In most cases criminal courts make use of their right to decline to deal with claims for material damages, although they may grant claims for moral damage (involving small sums of money). The claim for compensation from the state for material damages must then be pursued before an administrative court, where once again the services of a lawyer will be needed.<sup>185</sup>

Consequently, as the situation stands at present, most victims without the financial resources to hire a lawyer are effectively denied the right to compensation and are marginalized in criminal proceedings against the alleged perpetrator.<sup>186</sup>

The above factors, compounded by the lack of information and insecure status common to many victims of state-inflicted human rights violations, as well as an understandable scepticism as to the efficacy of seeking redress, have ensured that relatively few victims take their complaints to court and even fewer are able to exercise their internationally guaranteed right to receive fair and adequate compensation. Of the cases referred to in this report, compensation (for material damage) has so far been granted by a court in only one instance (to the family of the deceased Marko Bulatović).

However, in June 2001 the NCHR recommended to the government that legal aid be made available at all stages of proceedings to persons in need, and in particular to immigrants, before all courts (civil, criminal and administrative).<sup>187</sup> The NCHR cited, *inter alia*, a recommendation of the Committee of Ministers of the Council of Europe concerning legal aid for the very poor, which urged that the governments of member states make available such aid “to all judicial instances”, and recognize “the right to be assisted by an appropriate counsel, as far as possible of one’s choice, who will receive adequate remuneration”.<sup>188</sup> In July 2002 it was reported that a draft law on the provision of legal aid to people with low incomes had been prepared, but by the end of the month this law had not been published or adopted.<sup>189</sup>

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<sup>184</sup> Some legal aid is available to the indigent in cases before civil and administrative courts, but not at the initial stages of proceedings when legal advice is liable to be of crucial importance for the protection of human rights, as the NCHR observed in its *Annual Report 2001*, p.139.

<sup>185</sup> In the case of injuries inflicted by an official who was not at the time on duty, the state is not liable, and compensation must be sought from the perpetrator through proceedings before a civil court (as in the case of Melpo Koronaïou (section D.2).

<sup>186</sup> A few individual lawyers and a small number of NGOs offer or arrange for free legal aid in a limited number of cases.

<sup>187</sup> NCHR, *op. cit.* p.141-142.

<sup>188</sup> Recommendation No.R (93) 1 adopted by the Committee of Ministers of the Council of Europe on 8 January 1993.

<sup>189</sup> *Eleftherotypia*, 12 July 2002.

## **E. CONCLUSION -- EFFECTIVE IMPUNITY**

Official figures confirm what this report, on the basis of a limited number of cases, documents: that law enforcement officials in Greece alleged to have committed serious human rights violations have benefited by effective impunity. Despite frequent complaints, few have been prosecuted, fewer brought to trial and still fewer have been convicted. Even when convicted, the sentences imposed have almost always been nominal -- suspended prison sentences.

In 1999 a commentator reportedly noted that anyone consulting penal law reviews for the previous 14 years (namely, since the addition of articles to the Criminal Code specifically penalizing torture) would seek in vain for a decision convicting a defendant of torture. She criticized the excessive leniency of courts, noting that “clear evidence of guilt is disregarded without any reasoned explanation”.<sup>190</sup>

AI/IHF are aware of only three cases in which police officers charged with offences relating to torture and ill-treatment were tried in first or second instance by courts in Greece in the years 2000 and 2001. In the first case an appeal court in March 2000 acquitted two police officers of the ill-treatment of Paraskevas Tranteros and Dimosthenes Argyroudis (see section B.5); in the second, a court in October 2001 acquitted a police officer of ill-treating Lazaros Bekos and Eleftherios Koutropoulos (see section B.1). In the third an appeal court in October 2001 confirmed the conviction of a police officer on charges of causing dangerous bodily injury to Melpo Koronaïou, but reduced his 30-month prison sentence to a suspended 15-month prison sentence (see section D.2). There have been no reports, to AI/IHF's knowledge, of such trials in the first half of 2002.

In the period from the beginning of the year 2000 to the end of the first half of 2002, there were at least five cases in which judicial councils or courts issued decisions in connection with fatal shootings by police officers. In two of these cases the competent judicial councils ruled that the defendants should not be indicted and they were accordingly not referred for trial. In two other cases the police officers concerned were convicted of manslaughter and received suspended prison sentences (one of the sentences was confirmed on appeal, and an appeal against the other is pending). In the fifth case, a police officer convicted of manslaughter was sentenced to four and a half years' imprisonment; his appeal was also pending at the time of writing this report. By the end of July 2002 no border guards or soldiers had been indicted in connection with any of the border incidents cited in section C.4.

AI/IHF do not claim that the above is an exhaustive list of such cases, and there may have been prosecutions and convictions of which the organizations are not aware. Official data on such matters is sparse. In particular, there appear to be no statistics on the prosecution of police or other law enforcement officials for death or injury caused by the unlawful use of

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<sup>190</sup> Elisabet Symeonidou-Kastanidou, cited by Christoforos Argyropoulos in an article “Penal provisions concerning torture” published in *Ποινική Δικαιοσύνη* 7/2002 (based on a paper given at a seminar on torture held by the Greek Section of Amnesty International in October 2001). He noted, however, two rulings by judicial councils of military courts (in 1995 and 1997) which had, in his view, correctly applied legal provisions dealing with torture and offences against human dignity.

firearms. However, the official figures available for the prosecution and conviction of law enforcement officials for torture or ill-treatment, though limited, present a striking confirmation of a pattern of effective impunity. According to these figures (which related to cases arising in the period from 1996 to 2000) not a single police officer was convicted of these offences.<sup>191</sup>

In May 2001 the Greek delegation informed the UN Committee against Torture that between 1996 and 2000 there were 163 complaints filed against police officers for alleged ill-treatment which gave rise to administrative inquiries. The outcome of these inquiries was that 121 complaints were dismissed, 18 were pending, and 24 police officers received (unspecified) disciplinary sanctions. In 52 of the 163 cases criminal investigations were started, but none had yet resulted in the conviction of a police officer. Eighteen, after being investigated and sent to court, resulted in acquittals or the case being dismissed; 34 cases were pending.<sup>192</sup>

According to figures issued by the Bureau (Directorate) of Internal Affairs of the Greek Police covering the period from 26 October 1999 to 31 December 2000, and limited to prosecutions of police officers, there were no prosecutions on charges of “Acts of torture and other offences against human dignity”. However, there were prosecutions under other articles of the Criminal Code which define acts which can include physical and psychological ill-treatment. There were prosecutions on 10 charges of “Abuse of office” (Article 239), three of “Unlawful duress” (Article 330), two each of “Threat” (Article 333) and “Insult” (Article 361), and one each of “Simple bodily injury” (Article 308) and “Dangerous bodily injury” (Article 309) -- a total of 19 charges. These figures did not reveal how many police officers were prosecuted (an individual officer may have been prosecuted on one or more charges). The comparable figures for 2001 were 10 charges of “Abuse of office” and one each of “Threat”, “Insult” and “Simple bodily injury”, 13 charges in all. As has been noted earlier, these statistics appear to be incomplete.

In March 2001 a senior police officer gave figures for administrative disciplinary proceedings against police officers alleged to have committed offences against human dignity, psychological pressure and bodily injury.<sup>193</sup> According to his figures, during 2000 there were 43 such proceedings. Of these, 18 cases were completed and 25 were pending. In only one case out of the 18 was a police officer found to have been at fault, and he was fined. This case had additionally been sent to court, and the officer had been required to pay a pecuniary penalty.

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<sup>191</sup>Note that two cases cited in this report which appear to conflict with this claim, that of two officers convicted in 1999 (but subsequently acquitted in 2000) of the ill-treatment of Paraskevas Tranteros and Dimosthenes Argyroudīs, and of an officer convicted in 1999 of causing grievous bodily injury to Melpo Koronaiou, arose out of complaints filed prior to 1996.

<sup>192</sup>CAT/C/SR.460, 12 March 2002 (the same statistics are cited in Greece’s fourth periodic report to the UN Committee against Torture submitted on 21 January 2002).

<sup>193</sup>Unedited transcript of the session debates at a meeting of the CERD on 19 March 2001 to review Greece’s report on its compliance with the Convention against Racial Discrimination; transcript by GHM from tapes made available by the CERD Secretariat.

It appears that the latter case concerned Florian Sakaj, from Albania, who in January 1999, when he was 15 years old, was arrested during a student demonstration in Athens and ensuing incidents, but was soon cleared of having participated in these. A police officer, Pantelis Lagouros, allegedly called him a “dirty Albanian” and forcibly cut his long hair. At the time the Athens Police Headquarters reportedly announced that “*for this action, which we condemn outright, disciplinary proceedings have been started for the severe and exemplary punishment of the police officer*”. In fact, the officer was punished a year later with a low fine. The officer was also prosecuted on charges of “insult”. On 13 March 2001 he apologized in court to Florian Sakaj, who agreed to the dismissal of charges on condition that the officer paid the compensation he was claiming towards the medical expenses of an unrelated sick child.<sup>194</sup>

Various explanations have been offered for the very low rate of prosecution and conviction of police officers for torture and ill-treatment. When queried by members of the Committee against Torture on this subject in May 2001, the head of the Greek delegation expressed the view that the “reason few police officers were prosecuted was that there was a lack of evidence, and that many of the complainants were acting in bad faith”. He acknowledged, however, that “some courts might even show leniency towards the police, because they considered they had to operate in difficult circumstances”.<sup>195</sup>

The explanation which attributes bad faith to many complainants is questionable. The costs of litigation -- in time and money -- and above all, the low probability of obtaining satisfaction, are unlikely to encourage many to engage in spurious litigation, although such cases may exist. Rather it seems likely that there are many cases in which people with well-founded complaints of ill-treatment have failed to make these known and take legal action, for reasons which have already been referred to such as their insecure or unauthorized status, financial constraints, language obstacles, and lack of confidence in a positive outcome.

Lack of evidence, on the other hand, is clearly a factor. It can be difficult or impossible for the victim singlehandedly to substantiate allegations of torture and ill-treatment, since these offences do not necessarily leave physical traces, and may take place in isolation, or in the presence of other police officers reluctant to testify against a colleague. Here the role of prosecutors and investigating judges is crucial. If committed and energetic, they are in a position, when presented with a complaint of torture or ill-treatment, to ensure that a considerable body of evidence to support or refute the allegation is collected. In particular, when torture or ill-treatment takes place in custody -- that is, in an enclosed and specific locality with a limited number of identifiable suspects -- conviction rates should be very much higher than in comparable cases of common assault taking place on the street. Records at the police station can be immediately seized to find out who was on duty at the time of the alleged offence (and if no records are available, officers should be prosecuted or disciplined for their administrative negligence). Investigating judges can order an immediate forensic examination of the alleged victim. Other detainees can be examined and questioned as potential witnesses. Prosecutors and investigating judges can also establish whether detainees were permitted access to legal counsel and medical care and allowed to notify their

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<sup>194</sup> *Eleftherotypia*, 14 March 2001

<sup>195</sup> CAT/C/SR.463, 9 May 2001.

families of their detention. (Similarly, the investigation of incidents of death or injury arising out of the use of firearms by identified law enforcement officials, in cases such as those described in this report should also, at least in principle, present fewer problems than in comparable cases where the identity of the perpetrator is not immediately known.)

In practice, however, as has been seen, judicial investigations into complaints of torture and ill-treatment are rarely promptly carried out, and in some cases prosecutors and investigating judges have failed to take the necessary steps to ensure the prompt initiation of investigation proceedings and the timely forensic medical examination of an alleged victim. Even when forensic medical examinations do take place, the resulting reports may fail to record significant information, including statements by the alleged victim relevant to the medical examination. Additionally, the collection of evidence may in some cases be hampered by a lack of full cooperation on the part of the police.

The history of those few cases in which investigations into allegations of torture and ill-treatment or shootings have led to the prosecution and indictment of law enforcement officials is not encouraging. As has been seen, it can take over five years for a case to be tried in first instance. Moreover, the cases which feature in this report confirm a tendency on the part of the judiciary to show leniency towards the police and to give greater credence to police testimony than to opposing testimony even, in some cases, when the latter is supported by forensic medical or ballistic evidence. Finally, almost without exception, defendants have either been acquitted or, if convicted, have received a suspended prison sentence.

Taken together, the above factors tend to be particularly unfavourable to victims who are Roma or immigrants, who in their attempts to obtain justice and reparation risk further encounters with apathy or hostility engendered by racial prejudice or xenophobia.

During 2001 AI/IHF learned of some 20 cases in which complaints, including criminal complaints, were made by people who alleged that they had been tortured or ill-treated by police officers. This figure does not reflect the true number of such incidents, which are likely to have been considerably more numerous. In the first half of 2002 there were at least 15 further reports of the alleged ill-treatment of detainees by police, and in some of these cases too criminal complaints were filed. AI/IHF will continue to monitor the outcome of judicial and disciplinary proceedings in these cases and any others that may arise.

## **F. RECOMMENDATIONS**

AI/IHF call on the Greek authorities to implement the following measures in order to eradicate the use of torture and ill-treatment by police and law enforcement officials, to end repeated breaches of international human rights standards in their use of firearms, and to ensure that the cycle of effective impunity for human rights violations, which can only encourage their persistence, is decisively broken.

### **1. Preventing impunity**

- All allegations of torture and other cruel, inhuman or degrading treatment or punishment should be subject to prompt, thorough, independent and impartial investigation. Greece should aim for best practice and in this context consider the

- guidelines set out in the UN Principles on the Effective Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol);
- Similarly, all allegations concerning the unlawful use of firearms by law enforcement officials should be subject to prompt, thorough, independent and impartial investigation;
  - Officials under investigation for serious human rights violations should be removed from their positions of responsibility pending the outcome of disciplinary and/or judicial proceedings against them;
  - Alleged victims of human rights violations should be made aware, in languages they understand, of their rights. They should be informed of available remedies, how to gain access to those remedies and how to obtain legal assistance, where necessary. They should have direct access to forensic medical examination and those who lack financial means should have access to free legal aid;
  - The outcome of all disciplinary investigations, as well as judicial investigations, should be made public promptly after the completion of the investigation;
  - Any law enforcement official reasonably suspected of responsibility for serious human rights violations should be brought to justice and sentences should be imposed which are commensurate with the gravity of the crime;
  - Victims or their families should receive reparations, including fair and adequate compensation, and where relevant, the means for as full rehabilitation as possible;
  - Increased resources should be made available to the criminal justice system to shorten unreasonably protracted judicial proceedings;
  - Statistics on complaints against law enforcement officials, and how they have been dealt with, should be regularly published, in order to identify patterns of violations and establish appropriate remedial action. These statistics should also identify complaints relating to alleged racism, discrimination or xenophobia. Statistics on the use of firearms by law enforcement officials, including figures for prosecutions for inappropriate use of firearms, should also be published regularly, a practice which would increase the accountability of law enforcement agencies and promote public awareness of policy and practice as regards the use of lethal force.

## **2. Safeguards against torture and ill-treatment during arrest and in police custody**

- Law enforcement officials when carrying out arrests should strictly observe the provisions of Article 278 of the Code of Criminal Procedure, which require them to behave with “all possible courtesy towards the person they are arresting and to respect his honour. They should not use force unless necessary, and are not permitted to use handcuffs unless the person being arrested resists or is suspected of being likely to flee”;
- The provisions of Circular Order No 4803/22/14-a of 3 November 1995 and subsequent directives of the Ministry of Public Order should be strictly enforced.

Namely, all detainees should be immediately informed of their rights, either on arrest or immediately after arrival at a police station. Detainees should be guaranteed prompt and regular access to lawyers and doctors and must be given the right to notify their families. Foreign nationals should be enabled to contact their embassies or consulates. Detainees should be informed that legal aid is available to defendants who cannot afford the services of a lawyer.

- Existing rules for the provision of this information (both in the form of bulletins, and orally) in relevant languages should be fully implemented, including the rule that the detainee and the police officer are required to confirm, by appending their signatures to a copy of the bulletin, that the detainee has duly received the bulletin and an explanation of his or her rights;
- Particular attention should be given to the enforcement of all existing legislation designed to protect children under arrest and detention, including the separate detention of children from adults (except where this is not in the child's best interest);
- Information about complaints procedures, in Greek and other languages, should be prominently displayed in all police stations, and included in the bulletins (and their translations into foreign languages) which, under Circular Order No 4803/22/14-a of 3 November 1995 of the Ministry of Public Order, are required to be given to all detainees;
- law enforcement officials who fail to observe these provisions and to safeguard the rights of detainees should be appropriately sanctioned;
- Greece should consider instituting a mechanism for independent, civilian inspection of police stations and other detention facilities, and should honour its public commitment (made when presenting its third periodic report to the Committee against Torture in May 2001) to granting uninhibited access to all detention facilities by the UNHCR and NGOs.

### **3. Safeguards against ill-treatment in the context of immigration controls and deportation**

- Police officers acting as escorts during deportation operations should be issued clear instructions that no more force should be used than is reasonably necessary, in line with recommended standards for the use of force by law enforcement officials.

### **4. Training for law enforcement officials**

- Existing training programs and any new programs to be introduced should be subject to regular review, so as to ensure that law enforcement officials are given practical training in how to implement national law and international human rights legislation both in their daily duties and in situations of emergency, with particular emphasis on non-violent measures of law enforcement. Training in the use of firearms should

ensure that law enforcement officials are professionally competent both in handling arms and in risk assessment.

- This training should reinforce measures specifically designed to promote race-awareness and combat racist or xenophobic attitudes amongst police officers, in line with General Recommendation XIII (Training of law enforcement officials in the protection of human rights) of the Committee on the Elimination of Racial Discrimination that: "*Law enforcement officials should receive intensive training to ensure that in the performance of their duties they respect as well as protect human dignity and maintain and uphold the human rights of all persons without distinction as to race, colour or national or ethnic origin ... the Committee calls upon States Parties to review and improve the training of law enforcement officials so that the standards of the Convention [against Racial Discrimination] as well as the Code of Conduct for Law Enforcement Officials (1979) are fully implemented.*"

#### **5. National legislation and monitoring mechanisms**

- Any draft legislation relating to the use of firearms by police should be carefully scrutinized so as to ensure that its provisions and any related regulations conform to international standards, including the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Legislation and regulations relating to the use of firearms by coast guards and soldiers on border duty should similarly be brought into line with these standards. Following the adoption of any new legislation on the use of firearms, its implementation should be regularly monitored to assess whether the law adequately reflects the practical needs of law enforcement officials for clear guidelines in the use of force and firearms in accordance with international standards;
- In view of the reported forthcoming adoption of comprehensive anti-racist legislation a national commission should be established, comprised of experts in the field, including representatives of particularly affected communities, to advise on the drafting of such legislation, and following its adoption, to monitor its implementation.
- The procedures of the Sworn Administrative Inquiry should be reviewed so as to ensure greater impartiality, independence and transparency, and greater protection of the rights of the complainant;
- State bodies should fulfil their legal obligation to cooperate fully with the Ombudsman. The recommendations made by the Ombudsman and the National Commission for Human Rights should in all cases be given the most careful consideration, with a view to their prompt implementation, while the latter institution should be granted resources appropriate to its function and significance.

#### **6. Ratification and implementation of international treaties and standards**

- Greece should ratify, among others, Protocol 12 to the European Convention on Human Rights, the Council of Europe Framework Convention for the Protection of National Minorities, and the International Convention on the Protection of the Rights

of all Migrant Workers and Members of their Families. It should also fulfil its pledge to make a declaration under Article 14 of the Convention on the Elimination of Racial Discrimination enabling the Committee on the Elimination of Racial Discrimination to receive individual petitions from those under Greek jurisdiction alleging that they are victims of violations of the Convention;

- the Greek authorities should ensure the implementation of the recommendations of international and regional human rights treaty bodies, including the following:

**Some key recommendations from the Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 25 May to 6 June 1997.<sup>196</sup>**

- The Ministry of Public Order to remind police officers, through a formal statement, that they should be respectful of the rights of persons in their custody and that the ill-treatment of such persons will be the subject of severe sanctions. In this statement, emphasis should be placed on the key role to be played by senior staff in managing and supervising police activities at all levels (paragraph 16);
- Police officers to be reminded that no more force than is reasonably necessary should be used when apprehending a person and that once the person apprehended has been brought under control, there can be no justification for him being struck or otherwise roughly treated or humiliated by police officers (paragraph 17);
- Whenever a public prosecutor or judge receives an allegation of ill-treatment by the police, or observes that a detained person brought before him could have been a victim of ill-treatment, he should immediately request a forensic medical examination of the person concerned and bring the matter to the attention of the relevant public prosecutor (paragraph 18);
- Steps to be taken to ensure that:
  - State forensic services are authorised to accept requests for medical examinations presented to them directly by persons who allege ill-treatment, or by their doctor or lawyer;
  - All medical certificates drawn up after a forensic examination contain:
    - (i) a full account of statements made by the person concerned which are relevant to the medical examination (including his description of his state of health and any allegations of ill-treatment)
    - (ii) a full account of objective medical findings based on a thorough examination, and
    - (iii) the doctor's conclusions in the light of (i) and (ii);

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<sup>196</sup>CPT/Info (2001)18, p.91 and pp.94-95.

- Such medical certificates are made available to the person concerned and his lawyer (paragraph 19);
- The Greek authorities to take steps to ensure that the practice followed by police officers is brought in line with the existing legal provisions concerning the right of access to a lawyer (paragraph 85);
- The Greek authorities to make appropriate arrangements to ensure the confidentiality of discussions between persons in police custody and their lawyers (paragraph 86);
- All medical examinations to be conducted out of the hearing and - unless the doctor requests otherwise in a given case - out of the sight of police officers (paragraph 90);
- The results of every examination, as well as any relevant statements by the detainee and the doctor's conclusions, to be formally recorded by the doctor and made available on request to the detainee and his lawyer (paragraph 90);
- The Greek authorities to take steps to ensure that the information sheets provided for by Order No 4803/22/14-a of 3 November 1995 are systematically given to persons detained by the police at the outset of their custody (paragraph 92).