



SUBMISSION TO THE COMMITTEE AGAINST TORTURE CONCERNING GREECE'S SEVENTH PERIODIC REPORT

67TH SESSION OF THE COMMITTEE AGAINST TORTURE

1. The extent of the torture and ill-treatment of migrants in Greece in recent years has been well documented. In 2012, in its concluding observations on Greece's report, the UN Committee Against Torture expressed its concern at "persistent allegations of torture and ill-treatment by law enforcement officials" and "repeated and consistent reports of ill-treatment of undocumented migrants, asylum seekers and Roma by law enforcement officials, including in detention facilities".¹ Since this report, repeated observations from the Council of Europe and NGOs have documented new cases of torture and ill-treatment by security forces, and highlighted the continuing impunity and lack of adequate reparation in the older cases adjudicated by domestic courts or the European Court of Human Rights (ECtHR).²
2. REDRESS is an international human rights organisation that represents victims of torture in obtaining justice and reparations. It brings legal cases on behalf of individual survivors and applies its expertise in torture, reparations, and the rights of victims to conduct research and advocacy to identify necessary changes in law, policy and practice. It assisted Mr Necati Zontul, a victim of torture by officers of the Greek Coastguards, in bringing a case against Greece at the ECtHR.³ Since the ECtHR's decision in favour of Mr Zontul in 2012, REDRESS has been monitoring the implementation of the judgment and issuing recommendations on individual and collective measures arising from the ECtHR judgment in the *Zontul* case and other cases of torture.⁴
3. This submission addresses two main issues mentioned in the Committee's List of issues prior to submission of the seventh periodic report of Greece due in 2016 and the State Party's Reply: the definition of torture, mentioned by the Committee in paragraph 1 of the List of Issues; and the lack of accountability of the perpetrators of acts of torture and ill-treatment, mentioned in paragraph 4 of the same document. While the submission will particularly refer to the *Zontul* case, its observations and recommendations highlight systemic issues and necessary reforms to strengthen the absolute prohibition of torture and ill-treatment in law and practice in Greece.

1) DEFINITION OF TORTURE

4. In its concluding observations of 2012, the Committee urged the State party to incorporate in its criminal law a definition of torture that covers all elements

¹ Committee Against Torture Concluding Observations on Greece's Fifth and Sixth Periodic Reports, 27 June 2012, CAT/C/GRC/CO/5-6, paras 10 and 12.

² UNHRC, Report on the follow-up to the concluding observations of the Human Rights Committee, CCPR/C/124/2, 6 December 2018, pp. 5-10. Council of Europe, Committee of Ministers, H46-13 Makaratzis group v. Greece (Application No. 50385/99), 4-6 December 2018, at https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016808fddd

³ ECtHR, *Zontul v Greece* (application no. 12294/07), 17 January 2012.

⁴ REDRESS, Submission to the Committee of Ministers on the Execution of *Zontul v Greece*, 25 October 2018.

contained in article 1 of the Convention Against Torture (the Convention).⁵ In particular, the Committee indicated that this definition should draw a distinction between acts of torture committed by or at the instigation of or with the consent or acquiescence of a public official and any other person acting in an official capacity, and acts of violence committed by non-State actors.

5. The incompatibility of the Greek definition of torture with the UN Convention has also been brought to the attention of Greece by the Commissioner for Human Rights of the Council of Europe, who underlined that the requirement that the infliction of severe pain be “planned” (“μεθοδευμένη”, sometimes translated as “systematic”) did not exist in Article 1 of the Convention.⁶ In its list of issues prior to submission of the seventh periodic report of Greece due in 2016, the Committee asked Greece to provide information on “any steps taken by the State party to adopt a definition of torture which covers all elements contained in article 1 of the Convention.”⁷
6. In January 2018, in its reply to the observations of the Committee, the State party indicated that it requested the Law-drafting Committee to examine the compatibility of the current definition of torture (art. 137 A) with article 1 of the Convention.⁸ The State party also mentioned that the National Commission for Human Rights, Greece’s National Human Rights Institution, had expressed its concern on this definition issue.
7. Following the work of the Law-drafting Committee, a thoroughly revised draft Criminal Code and Code of Criminal Procedure was published by the Government on 8 March 2019 for public consultation.⁹ Following this consultation, the new penal code was submitted to the Parliament and adopted in June 2019. In the draft law proposed to the public consultation, article 239A appears as a slightly amended version of Article 137A. Torture is defined in paragraph 5 of article 239 A:

“According to this article, the definition of torture encloses any systematic (μεθοδευμένη) infliction of acute physical pain or physical exhaustion endangering the health of person, or mental suffering capable to 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. Acts or consequences in accordance with lawful execution of penalties or other lawful restrictions of liberty or other legal means of coercion are not incorporated in the definition of torture.”¹⁰
8. Despite objections made by civil society organisations during the consultation, this draft article has not been modified by the Parliament.¹¹ It does not incorporate any of the changes requested by the Committee and other human rights mechanisms. In particular, four aspects of the existing Criminal Law and its revised draft need to be

⁵ CAT/C/GRC/CO/5-6, para. 9

⁶ Commissioner for Human Rights, Letter to the Greek Minister of Justice Ref: CommHR/NM/sf 020-2017, 18 April 2017, <https://rm.coe.int/168070d55e>.

⁷ Committee Against Torture, List of issues prior to submission of the seventh periodic report of Greece due in 2016, CAT/C/GRC/QPR/7, para. 1.

⁸ Seventh periodic report submitted by Greece under article 19 of the Convention pursuant to the optional reporting procedure, due in 2016, 19 January 2018, CAT/C/GRC/7, para. 3.

⁹ <http://www.opengov.gr/ministryofjustice/?p=9834>

¹⁰ Ibid, Article 239 A, paragraph 5.

¹¹ Greek Helsinki Monitor, Rule 9/2 Communication on the Makaratzis group of cases for the 1348th meeting on 4-6 June 2019 (25 March 2019) at https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016809417d4

thoroughly amended to bring the definition of torture in conformity with international law.

a) The distinction between acts of torture committed by or with the consent of State actors and acts of violence committed by non-State actors.

9. Article 1 of the Convention explicitly mentions that the scope of torture is limited to acts done “at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”¹² The absence of a similar provision in the definition of torture in the Greek criminal code does not establish clearly enough State substantive and procedural obligations under Article 1 of the Convention. In its General Comment No.2, the Committee recalled that States bear international responsibility for the “acts and omissions of their officials and others, including agents, private contractors, and others acting in official capacity or acting on behalf of the State, in conjunction with the State, under its direction or control”.¹³ In addition, the State obligations include diligence to prevent, investigate, prosecute and punish acts of torture committed by private actors and should provide redress to the victims when it failed to do so.¹⁴ This principle has been particularly applied by the ECtHR in case of gender-based violence and domestic violence. It was also applied in *Sakir v. Greece*, where the Court ruled that the failing of Greece to investigate a violent assault by a gang against an Afghan man constituted a violation of the procedural aspect of Article 3 of the European Convention of Human Rights.¹⁵

b) The requirement that torture be planned

10. The requirement under Greek law that treatment be “planned” or “systematic” for it to constitute torture means that certain acts that are considered torture under the Convention Against Torture and the European Convention are, incorrectly, not considered as such under Greek law. An example is the one-off rape of a detainee by a public official, as happened in Mr Zontul’s case, a Turkish man raped by a Greek coastguard while detained in a camp for asylum seekers. In *Zontul v Greece*, the ECtHR considered that the reason the Greek courts incorrectly held that the perpetrators were not guilty of torture was because the Greek Criminal Code wrongly required that torture be “planned” (para 87).¹⁶ The Court also underlined that there was no consensus on the meaning of the word “μεθοδευμένη” in the Criminal Code, which can be interpreted either as “systematic” or “purposeful”.¹⁷ As stated by the Committee in its 2012 concluding observations, this provision thus fails to meet “the need for clarity and predictability in criminal law”.¹⁸
11. Despite the new recommendations, the new Criminal Code did neither remove nor clarify the term “μεθοδευμένη”. In this, it also failed to follow the recommendations

¹² Convention Against Torture, Article 1.

¹³ UN CAT, General Comment No.2: Implementation of Article 2 by State Parties, 24 January 2008, CAT/C/GC/2, para. 15, at <https://www.refworld.org/docid/47ac78ce2.html> [accessed 10 June 2019]

¹⁴ Ibid.

¹⁵ ECtHR, *Sakir v. Greece* (application no. 48475/09), 24 March 2016.

¹⁶ ECtHR, *Zontul v Greece* (application no. 12294/07), 17 January 2012, para. 87.

¹⁷ Ibid, para. 48-50.

¹⁸ Committee Against Torture Concluding Observations on Greece’s Fifth and Sixth Periodic Reports, 27 June 2012, CAT/C/GRC/CO/5-6, para 9.

of the Greek Ombudsman in the *Zontul* case, which suggested that “the wording “planned infliction of pain” shall be removed from the definition of torture.”¹⁹

c) The lack of adequate sentences

12. In its General Comment no 2, the Committee noted that the codification of the crime of torture shall “emphasize the need for appropriate punishment that takes into account the gravity of the offence” and “strengthen the deterrent effect of the prohibition itself”.²⁰ This requirement is not fulfilled by the provisions of the old Greek Criminal law, nor by the new one. Of particular concern is the distinction between torture, defined 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”, and “cases involving physical injury, harm to health, use of illegal physical or psychological force and any other serious offence against human dignity”, for which lighter penalties are required, defined in Art. 137 A. 3.
13. In the old Criminal Code, the penalty laid down for acts of torture defined in Articles 137 A.1 and A.2 was five to twenty years’ imprisonment, while it was three to five years’ imprisonment for violations of Article 137 A3. In addition, following art. 83 and 84 of the Criminal Code, the courts have the possibility of imposing a lower sentence when there are mitigating circumstances. This may amount, for Article 137A.3, even to suspended sentences of less than three years if the perpetrator has no prior conviction. Thus, in the *Zontul* case, the appellate judgment held that the rape of Mr Zontul fell under Article 137 A.3 and referred to Article 84 to reduce the penalty to six months imprisonment for “mitigating circumstances”. The Court further suspended this term for three years and converted the term, if the suspended sentence were to be lifted, to a pecuniary fine of EUR 792.²¹ This sentence was not considered adequate by the ECtHR, which found that these sanctions were “manifestly disproportionate in view of the seriousness of the treatment inflicted on the applicant. ... [T]he Greek penal system, as applied in the present case, did not have the deterrent effect expected to prevent the commission of the offense complained of by the applicant and failed to adequately remedy the ill-treatment he had suffered.”²²
14. The new Criminal Code does not establish more adequate sentences for acts of torture. Civil servants or military officers are to be sentenced for up to ten years for acts of torture, and at least ten years if these acts are a) committed through means or ways of systematic torture, especially blow to the victim’s feet (φάλλαγγα – phalanga), electroshocking, virtual execution, use of hallucinatory substances, or b) result in grave bodily harm. The distinction between acts of torture and “body harm, detriment to health, exercise of illegal physical or psychological violence and any other breach of human dignity” remains, and a sentence of three years applies to the latter, instead of three to five years as in the previous Code.

¹⁹Annual report of the Ombudsman for 2018, 23 March 2019, p. 75, at

<https://www.synigoros.gr/resources/docs/ee2018-p00-plires-keimeno.pdf>, p.

²⁰ UN CAT, General Comment No.2: Implementation of Article 2 by State Parties, 24 January 2008, CAT/C/GC/2, para. 11.

²¹ Appellate judgment 62/2004, pp. 121 and 58-61.

²² ECtHR, *Zontul v Greece*, para. 107-109.

d) The 15-year limitation period has not been reviewed in Article 111 of the draft law.

15. A further incompatibility between the current Greek law on torture and international law is the application of a fifteen-year limitation period to the crime of torture.²³ The UN Committee Against Torture has made clear that limitation periods are not permissible for the crime of torture:

“On account of the continuous nature of the effects of torture, statutes of limitations should not be applicable as these deprive victims of the redress, compensation, and rehabilitation due to them. For many victims, passage of time does not attenuate the harm and in some cases the harm may increase as a result of post-traumatic stress that requires medical, psychological and social support, which is often inaccessible to those whom have not received redress. States parties shall ensure that all victims of torture or ill-treatment, regardless of when the violation occurred or whether it was carried out by or with the acquiescence of a former regime, are able to access their rights to remedy and to obtain redress.”²⁴

16. The jurisprudence of the ECtHR has also underlined the importance of this issue in crimes of torture and ill-treatment:²⁵

“The Court further points out that where a State agent has been charged with crimes involving torture or ill-treatment, it is of the utmost importance for the purposes of an “effective remedy” that criminal proceedings and sentencing are not time-barred and that the granting of an amnesty or pardon should not be permissible.”

17. The time limitation in Article 111 prevents Greece from bringing further criminal proceedings against the Coastguard officers responsible for Mr Zontul’s torture. This aspect was addressed by the Ombudsman in its 2018 report. While stating that any reversal of statute of limitations would not apply retroactively, and that it would thus have no impact on the *Zontul* case, the Ombudsman suggested that “it should be examined whether grave breaches of human dignity and physical integrity shall be classified as a felony in order to avoid a brief period of statute limitation in cases that the ECHR examines.”²⁶ This recommendation has not been taken into account in the new Criminal Code, where the statute of limitations in Article 111 remains the same.
18. The statute of limitation is also an obstacle to the disciplinary procedure against civil servants who commit such acts. The Ombudsman report mentions that a 5-year statute of limitation exists in accordance with Article 38, paragraph 13 of Law 4504/2017 for crimes of this nature.²⁷ In the *Zontul* case, in light of the ECtHR’s decision, the Ombudsman concluded that the case merited a new disciplinary procedure against the Coast Guard who perpetrated the act of torture. An investigation was launched following this recommendation but concluded “that

²³ Greek Criminal Code, Section 111 § 2.

²⁴ Committee Against Torture, General Comment No.3: Implementation of Article 14 by States Parties (13 December 2012), UN Doc. CAT/C/GC/3, para 38.

²⁵ ECtHR, *Abdülsamet Yaman v. Turkey* (application no. 32446/96), 2 November 2004, para 55.

²⁶ Annual report of the Ombudsman for 2018, 23 March 2019, p. 76, at <https://www.synigoros.gr/resources/docs/ee2018-p00-plires-keimeno.pdf>, p.

²⁷ *Ibid.*

although sufficing evidence exists for the imposition of heavier sentences to the responsible coast guard officers, these acts are subject to limitation.”²⁸

19. The Ombudsman called the legislative body to “decide whether enhanced authority will be transferred to the ECtHR in order to bind the bodies that conduct disciplinary procedures to the ECtHR’s interpretation of Article 3 of the European Convention of Human Rights, in order to better protect against acts that amount to torture, degrading and humiliating treatment.”²⁹ However, the Ombudsman considered that the conclusion of the disciplinary procedure was justified in the *Zontul* case due to the principle of non-retroactivity and suggested instead that the Head of Administration of the relevant Coast Guard office should issue a written apology by way of moral compensation to the victim. To this day, as far as REDRESS is aware, no step has been taken forward in that respect.

Recommendations:

- Article 239A of the new Criminal Code and Code of Criminal Procedure should be amended by the Law-Making Committee to bring its definition of torture in conformity with Article 1 of the Convention.
- These amendments should include removing the requirement that torture be planned; removing language that limits the scope of the definition of torture; introducing sanctions that are sufficiently punitive and are proportionate to the gravity of the crime committed and have the required deterrent effect.
- The crime of torture should be explicitly excluded from the 15-year limitation period in Article 111 of the draft law.
- The 5-year limitation period for disciplinary procedures in cases of torture (Article 38, paragraph 13 of Law 4504/2017) should be removed.

2) IMPUNITY AND THE LACK OF INDEPENDENCE IN THE INVESTIGATION OF TORTURE

a) Absence of effective investigation and prosecution

20. The effective and independent investigation of allegations of torture and ill-treatment constitutes a positive duty of the State parties under Article 12 of the Convention. It is essential to enforce the absolute prohibition of torture and fight impunity of the perpetrators, as underlined by the Council of Europe’s Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT):

“The credibility of the prohibition of torture and other forms of ill-treatment is undermined each time officials responsible for such offences are not held to account for their actions. If the emergence of information indicative of ill-treatment is not followed by a prompt and effective response, those minded to ill-treat persons deprived of their liberty will quickly come to believe – and with very good reason – that they can do so with impunity”.³⁰

21. In its case law, the ECtHR has specified in numerous cases that investigations of torture and ill-treatment must have hierarchical, institutional and practical independence. As stated by the Court in *Najafli v Azerbaijan*:

²⁸ Ibid.

²⁹ Ibid.

³⁰ 14th General Report on the CPT’s activities, CPT/Inf (2004) 28, para. 2

“The Court has repeatedly stressed that the procedural obligation under Articles 2 and 3 requires an investigation to be independent and impartial, both in law and in practice. ... What is important is that the investigation of alleged misconduct potentially engaging the responsibility of a public authority and its officers was carried out by those agents’ colleagues, employed by the same public authority. In the Court’s view, in such circumstances an investigation by the police force of an allegation of misconduct by its own officers could not be independent in the present case.”³¹

22. The *Zontul* case illustrates Greece’s ongoing failure to conduct effective and independent investigations into cases of torture and to comply with the decisions of the ECtHR in this respect.³² In 2017, Greece reopened the disciplinary investigation into Mr Zontul’s torture, as an individual measure to execute the ECtHR judgment.³³ However, the new investigation was not only carried out by the Greek Coastguard itself, but it appears that it was being carried out by officers from the same regional administration as those responsible for Mr Zontul’s torture and the original failed investigation. The email signature of Captain Alexandrakis, the Coastguard officer that contacted REDRESS about the reopened disciplinary investigation, states that he is part of the 7th Regional Administration and gives his contact address as Heraklion, Crete. Mr Zontul’s original torture took place in Crete, and therefore the Coastguard officers responsible were presumably also part of the 7th Regional Administration. Similarly, the original failed disciplinary investigation appears to have been carried out by the Coastguard Port Captain of Heraklion.³⁴ Such close connections would remove any possibility of the reopened disciplinary investigation being independent from the individuals and events it was supposed to be investigating. Given these serious concerns with the impartiality and effectiveness of the investigation, Mr Zontul did not participate in this process.
23. The reopened investigation was closed on 13 April 2018, with a decision dismissing the case based on the limitation period for such investigations. Mr Zontul was only indirectly informed of this closure through Greece’s submission to the CoM in October 2018.³⁵ In its judgment, the ECtHR found that Greece had failed in its duty to involve Mr Zontul as a victim in the proceedings³⁶. In failing to inform Mr Zontul or REDRESS about the closure of the reopened disciplinary investigation, Greece has repeated its failings in the original disciplinary investigation and criminal prosecution of Mr Zontul’s case.
24. The *Zontul* case is not isolated. Since 2016, at least twenty-five ECtHR cases have been communicated to Greece that involve the alleged death, torture or ill-treatment of refugees and migrants by the Greek authorities. Of those cases, three, involving 35 individual applicants, will examine specifically the alleged failings in investigations that have been conducted by the Greek authorities into the asserted deaths, torture or ill-

³¹ ECtHR, *Najafli v Azerbaijan* (application no. 2594/07), 2 October 2012, para 5.

³² REDRESS, Submission to the Committee of Ministers on the Execution of *Zontul v Greece*, 25 October 2018.

³³ Council of Europe, Decision of 1302nd Meeting of the Council of Europe Committee of Ministers, 7 December 2017, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000168076d31b.

³⁴ ECtHR, *Zontul v Greece*, para 16.

³⁵ Submission of Greek Government to Committee of Ministers, 4 October 2018, [http://hudoc.exec.coe.int/eng?i=DHDD\(2018\)971F](http://hudoc.exec.coe.int/eng?i=DHDD(2018)971F), pp 3-4.

³⁶ ECtHR, *Zontul v Greece*, para 110-112.

treatment. Despite this, REDRESS understands that since 1984 only one case of torture has been successfully investigated and prosecuted in Greece. Even in that one case, the perpetrators were not given a custodial sentence, and only a fine. That case has since been examined by the ECtHR, which ruled, in a similar finding to that in *Zontul*, that Greece's failure to impose a custodial sentence was a breach of Article 3 of the European Convention, as it failed sufficiently to deter other instances of torture.³⁷

b) Weakness of the Ombudsman mechanism

25. The Committee of Ministers (CoM) noted at its 1302nd meeting on 7 December 2017 that the Greek Ombudsman had been appointed in 2017 as the "National Mechanism for the Investigation of Incidents of Abuse by Law Enforcement Agents and by Employees of State Penitentiary Establishments" (the Mechanism for the Investigation of Arbitrary Behaviour).³⁸ This gave the Greek Ombudsman the power to supervise, among other things, investigations into allegations of torture and ill-treatment by public officials. The CoM in its decisions at the meeting asked Greece to provide further information about the results of the action undertaken by the Ombudsman in this capacity.
26. The Greek Government should be commended for the appointment of the Ombudsman as the Mechanism for the Investigation of Arbitrary Behaviour. It is a positive step towards ensuring accountability for public officials responsible for torture in Greece, and for ensuring access to justice for the victims of that torture. However, as demonstrated in the *Zontul* case, the policy whereby the Greek Ombudsman may, rather than investigating the allegation itself, forward the case to be investigated by the authority that has been alleged to have carried out the torture, creates significant risk to the independence of the investigation.
27. REDRESS notes Greece's assertion in its 4 October 2018 submission to the CoM that "the Ombudsman does not limit himself to supervising the conduct of the disciplinary procedure, but intervenes in the procedure in a substantial way".³⁹ This, however, is not enough. The caselaw of the ECtHR, as set out above, is very clear that investigations have to have hierarchical, institutional and practical independence from those they are investigating. Supervision, no matter how substantial, is not sufficient. This is because any initial investigation that is not independent is likely to contaminate witnesses and other evidence in such a way that would render a subsequent independent investigation impossible.
28. It is therefore necessary for the Greek Government to change the policy of the Greek Ombudsman to ensure that investigations for which it has responsibility as Mechanism for the Investigation of Arbitrary Behaviour have hierarchical, institutional and practical independence from those responsible for the alleged crimes. In practice this is likely to mean that the Greek Ombudsman should carry out the investigations itself or appoint another appropriate independent authority to carry out the investigations, rather than instructing the accused authority to investigate itself. In any event, the disciplinary investigation carried out under the supervision of the Greek Ombudsman

³⁷ ECtHR, *Sidiropoulos and Papakostas v Greece* (application no. 33349/10), 25 January 2018, para 99.

³⁸ Council of Europe, Notes on the Agenda of the 1302nd Meeting of the Council of Europe Committee of Ministers, 7 December 2017, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000168076387a.

³⁹ Submission of Greek Government to Committee of Ministers, 4 October 2018, [http://hudoc.exec.coe.int/eng?i=DHDD\(2018\)971F](http://hudoc.exec.coe.int/eng?i=DHDD(2018)971F)

would not alone constitute a sufficient measure of reparation. Only further criminal proceedings against the perpetrators for torture, resulting in the imposition of sufficiently punitive sanctions, can constitute an adequate remedy for such serious human right violations.

Recommendations:

- The Greek Government should comply with its obligations under the Convention and the ECHR and conduct independent and effective criminal and disciplinary investigations into alleged torture.
- In the Zontul case and other cases of torture, the Greek Government should execute the ECtHR judgments and reopen criminal and disciplinary investigations into alleged torture to end impunity of the perpetrators. These proceedings should comply with due process standards for the investigation of torture, as established in the caselaw of the ECtHR and the CAT.
- The Greek authorities should take all necessary steps to involve victims of torture in the investigation and inform them of its results.
- With respect to disciplinary investigations, the Greek Government should amend the policy of the Greek Ombudsman, to require that investigations for which it has responsibility as Mechanism for the Investigation of Arbitrary Behaviour have hierarchical, institutional and practical independence from those responsible for the alleged crimes, and are not carried out by the authority that is itself the subject of the accusations