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Special Report

NATIONAL MECHANISM FOR THE INVESTIGATION OF ARBITRARY INCIDENTS

(EMIDIPA)

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INTRODUCTION

Introduction

The prerogative of taking coercive measures and exerting force, which is recognised to uniformed personnel of enforcement agencies within a liberal state and society, must be strictly limited to a necessary and proportional extent and be subject to thorough, substantive, and continuous control, while criminal and disciplinary sanctions should directly correspond to the gravity of the arbitrary or abusive action. Otherwise, the hard-fought trust relationship between security forces and society breaks down, and instead of enhancing the sense of security, the actions of uniformed agents intensify uncertainty among citizens. The assignment to the Ombudsman of the special competence for investigating cases of arbitrariness by security forces and penitentiary employees stresses the importance of enhancing the mechanisms of accountability and transparency when investigating every incident.

Many of the shortcomings identified while conducting investigations for the year 2021 had already been highlighted by previous reports of the Mechanism, despite the significant inroads in the disciplinary framework that have taken place in recent years. It is a fact that there is no room for complacency. It is widely admitted that full consolidation of procedural and substantive guarantees of effective, transparent, non-discriminatory investigations, consistent with the dictations of the rule of law and the jurisprudential principles, are not expected to be achieved at once. Changing the institutional framework alone is not enough, a change in culture of the investigator and the body as a whole is also necessary. It requires persistent efforts, without derogations or concessions.

The ever-increasing flow of cases in EMIDIPA is a positive and perpetual development (an increase of about 17% in 2021, compared to the previous year), especially those reported by citizens (an increase of about 40% in 2021, compared to the previous year). The Ombudsman's contribution, through the Mechanism's independent, external, and impartial review and control function, is firmly established as a counteracting factor for any possible lack of trust, or even confidence, of the alleged victim for substantial and effective criminal and disciplinary investigations. The common objective of not only society as a whole, but also of the forces that are subject to the oversight powers of the Mechanism, is the continuous progression of investigations, the establishment of transparent, substantive and impartial procedures, and the close observance of substantive and procedural guarantees, so as to strengthen citizens' confidence in the reliability of disciplinary investigations.

The enhancement of the Mechanism with the necessary expert staff is imperative due to the constantly rising volume of caseload. In December 2020, the institution of five (5) new expert personnel positions was envisaged by law; the actual recruitment depends on the overall planning for the public sector and the relevant funding that will be allocated to the Independent Authority. However, given the selection process to be followed and the wider planning in the public sector, the recruitment provided by law in 2020 is not expected to be completed sooner than 2023. Since 2018, the Independent Authority had highlighted that further strengthening the effective operation of the Mechanism, and the Ombudsman as a whole, while guaranteeing independence and impartial judgment, presupposes the enactment of a number of organizational and functional arrangements for the Ombudsman, in compliance with the "Venice principles", the set of 25 standards for the Ombudsman institution, elaborated by the Venice Commission and unanimously approved by the Committee of Ministers of the Council of Europe and adopted by the UN with a relevant resolution. One of the necessary arrangements is the establishment of a procedure for the selection of Ombudsman staff by the Authority itself, a provision that is neither innovative nor new, as in essence it is the procedure that had been foreseen by the founding legislator of the Greek Ombudsman.

The report for 2021 is structured similarly to the reports of the previous three years, to facilitate the comparative and systematic review of the degree of compliance of the internal disciplinary bodies with the recommendations and findings of the Ombudsman's Mechanism. At the same time, the report aims to enhance transparency and focuses on groups of cases or independent incidents that have raised public concern. During 2021, the assignment of special duties to enforcement agencies aiming at monitoring compliance with the measures against the spread of COVID-19, accounted for a series of complaints concerning violence and arbitrary conduct from the uniformed staff, culminating in the widespread incidents that took place in Nea Smyrni in March. The report makes special reference to the progress of these investigations.

In 2021, the Ombudsman again applied the referral to the Minister of Citizen Protection clause for cases in which internal investigations from the competent bodies of enforcement agencies departed from the findings of the Mechanism in an unjustified or insufficiently reasoned way. Two (2) new cases were referred and added to the four (4) that had been referred in 2020 to the Minister of Citizen Protection, for his actions, in his capacity as disciplinary head of services. A common point of all the relevant cases is that they were referred to the competent directorates of the Hellenic Police for further assessment. Another common point is

the delay of further assessments, which results in the eventual pending of the completion of the disciplinary investigations. Consequently, the effectiveness of the investigations is at stake and the precariousness of the investigated police officers' service status is extended. All disciplinary bodies, as well as the political and operational hierarchy of the bodies that are subject to the control of EMIDIPA are expected to confirm emphatically their commitment to support investigations with diligence and impartiality. The stakes are extremely high. As mentioned in the introductory note of the previous report, for the year 2020, the development of these cases, the initiatives and decisions of the political leadership will demonstrate the extent to which the Administration recognizes the de facto binding nature of the Authority's findings, while giving a clear message of sincere willingness and commitment by internal bodies to cooperate with the Ombudsman's Mechanism in investigating cases of arbitrariness. The Ombudsman insists on the use of the referral to the competent Minister instrument, in cases of unreasoned failure of internal investigations to comply with the Ombudsman's relevant findings, given that this constitutes "a substantial safeguard for the Administration's internal investigations", as the accompanying explanatory memorandum to the relevant provision characteristically proclaimed.

Upgrading the quality of disciplinary control of uniformed personnel of enforcement agencies and staff of penitentiary facilities may act as a catalyst in the reduction of arbitrary incidents and the restoration or reassertion of citizen's confidence. The Ombudsman's Mechanism remains committed to this mission, flatly refusing any compromise to or derogation from the transparent, impartial, and independent investigation of each reported incident.

Andreas I. Pottakis

The Greek Ombudsman

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THE INDEPENDENT AUTHORITY'S MANDATE AS NATIONAL MECHANISM FOR THE INVESTIGATION OF ARBITRARY INCIDENTS

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

The operation of the National Mechanism for the Investigation of Arbitrary Incidents (EMIDIPA) is provided for under Article 1 of L 3938/2011 (A' 61), as originally replaced by Article 56 of L 4443/2016 and then by Article 188 of L 4662/2020 (A '27)[1].

Within the scope of this specific competence, the Independent Authority shall collect, record, evaluate, investigate, and further suggest disciplinary action to the competent services, when complaints for actions of the uniformed personnel of the Hellenic Police, the Port Authority- Hellenic Coast Guard, the Fire Brigade, as well as the personnel of penitentiary facilities, are filed, which occurred in the exercise of their duties or as an abuse of their power, concerning:

a) torture and/or other violations of human dignity within the meaning of Article 137A of the Penal Code,

b) unlawful intentional violations of the right to life, physical integrity or health, personal freedom, or sexual freedom,

c) illegal use of a firearm, and

d) unlawful conduct for which there are indications that it was carried out with a racist motive, or which presents an implicit element of any other kind of discrimination on grounds of race, colour, national or ethnic origin, descent, religious or other beliefs, disability or chronic disease, family or social status, sexual orientation, gender identity or characteristics.

Cases are brought before the National Mechanism in writing and non-anonymously, ex officio or upon referral by the competent Minister or Secretary General of the ministry. Upon exercising the EMIDIPAS's power, the Ombudsman, after evaluating the above complaints, decides whether it should be investigated by the Independent Authority itself, or it should be forwarded to the competent Services for investigation, subject to its own responsibility for its own investigation following the disciplinary procedure. In this case, upon completion, the services

1. With Article 56 of L 4443/2016, the responsibility provided for in Article 1 of L 3938/29011 was assigned to the Ombudsman, while with Article 188 of L 4662/2020 the responsibilities of the National Mechanism were further strengthened.

are obliged to send their findings and the complete file of the administrative investigation to the Independent Authority, in order to assess whether it needs to be supplemented. Until the Ombudsman sends a resolution, the competent disciplinary bodies suspend the adoption of a decision. After taking into account the Ombudsman's conclusion, they are required to comply with the Ombudsman's recommendations, while any deviation from the Ombudsman's findings requires specific and detailed reasoning.

In 2020, under L 4662/2020 the legislator, responding to the relevant recommendations of the Ombudsman, gave the Mechanism effective powers of inquiry, similar to those of the internal disciplinary mechanisms of security forces, as well as instruments to further strengthen the decisive effect of its observations, investigations, and findings on disciplinary controls. In this context, inter alia, the Ombudsman informs the Minister about cases for which a deviation from its findings with insufficient reasoning is found, at each stage of the disciplinary procedure, about any actions on the part of the Minister, in his capacity as disciplinary head. EMIDIPA does not replace the judicial review and disciplinary control of incidents within its jurisdiction; nevertheless, its operation is parallel and complementary, without depriving the investigated of the legal judge (criminal or disciplinary)[2].

In addition, the Mechanism is called upon to reconsider those cases for which the European Court of Human Rights has convicted Greece of violating the provisions of the European Convention on Human Rights, due to lack of disciplinary procedure or not taking into consideration the existence of new evidence that was not evaluated in the disciplinary investigation or the trial. After taking into account in particular what the ECtHR acknowledged, as well as the expiry of the limitation period, EMIDIPA decides whether there needs to be a reinvestigation of the case.

EMIDIPA's action is supervised and coordinated by the Ombudsman, while its operating procedure is provided in the new Rules of Operation of the Mechanism[3].

An important aspect of the Mechanism's activity is its cooperation with similar bodies, primarily at European level. For the said activity, please refer to chapter seven (7) of the present Report.

2. Article 1 para. 10 L 3938/2011, as in force.
3. Government Gazette 10/23145/2020, B' 2359.

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STATISTICAL ASSESSMENT

2. Statistical assessment

During 2021, three hundred and eight cases were submitted to the Ombudsman (**308**) concerning the special competence of the National Mechanism for the Investigation of Arbitrary Incidents (EMIDIPA)[4], showing an **increase of 17%**, compared to 2020.

The vast majority of cases, namely two hundred and twenty-six (**226**) out of these, were forwarded by the Hellenic Police, which continues to systematically forward the relevant administrative investigations to the Independent Authority, while only four (**4**) were received from the Port Authority/ Hellenic Coast Guard. Conversely, for another year, no cases were forwarded by penitentiary facilities.

The number of citizens that filed reports was also significantly increased, that is, seventy-five (**75**) civilians trusted the Independent Authority in order to report arbitrary conduct of Security Forces, recording an **increase of 41%**, compared to those who had reported for the same reason to the Ombudsman within the last year, strengthening the sense of confidence in the Mechanism and its operation. Finally, two (**2**) petitions were forwarded by the FRONTEX Petition Mechanism and one (**1**) by the Legal Council of the State. The latter concerns ECtHR's judgment against our country, "Fountas v. Greece" 03.10.2019 (appeal 50283/13), the Authority's case under no. **F. 295729**.

Of the incoming cases, two hundred and ninety-two (**292**) were judged within a jurisdiction with only sixteen (**16**) to be archived due to lack of jurisdiction. Of the two hundred and ninety-two (**292**) cases undertaken by the Mechanism, eight (**8**) of them concerned actions or omissions of LS - ELAKT bodies, four (**4**) of which were forwarded, as already mentioned, by LS- ELAKT, while four (**4**) were relevant citizen reports.

The subject of the cases examined under the EPIDIPA's jurisdiction during the year 2021 concerned:

4. Article 1 L 3938/2011, as replaced by Article 56 L 4443/2016, and then by Article 188 L 4662/2020: a) *"…. torture and other violations of human dignity within the meaning of Article 137A of the Penal Code; b. unlawful intentional violations of the right to life, physical integrity, health, personal freedom, and sexual freedom; c. illegal use of a firearm; d. unlawful conduct for which there are indications that it was carried out with a racist motive, or which presents an implicit element of any other kind of discrimination on grounds of race, colour, national or ethnic origin, descent, religious or other beliefs, disability or chronic disease, family or social status, sexual orientation, gender identity or characteristics".*

Physical integrity or health:109 cases	37%
Personal freedom: 70 cases	25%
Racist motive or discrimination: 40 cases	14%
Illegal use of a firearm: 34 cases	12%
Torture and violations of Article137A of the PC: 22 cases	7%
Sexual freedom: 10 cases	3%
Attacks upon a person's life: 7 cases	2%

According to the table above, 6 out of 10 cases concern violation of physical integrity or personal integrity, while many cases (more than 20) concern violation of physical integrity combined with personal freedom.

Compared to the previous year, it is observed that the number of cases related to reported violations of physical integrity/health and attacks upon a person's life decreased by 8% and 2% respectively in 2021. On the other hand, there has been an increase in cases of conduct involving racist motives or discrimination (+ 4%), illegal use of a firearm (+ 3%), torture and violations under Article 137A of the PC (+ 2%) and violations of sexual freedom (+ 1%). Finally, reports concerning violations of personal freedom were in the same range.

During 2021, the Ombudsman issued case-file reports in one hundred and thirty-nine (**139**) Cases. Forty-one (**41**) out of these were referred to the Administration in order for their investigation to be supplemented as to the thoroughness of their evaluation and/or reasoning; for forty-eight (**48**) it was decided that they did not need to be further supplemented, subject to some general comments and recommendations, which should be taken into account in future administrative investigations; for twenty-three (**23**) it was deemed that the investigation was complete and thorough; fifteen (**15**) cases were archived after the completion of the investigation by the Administration; three (**3**) cases were archived, although the disciplinary control was deemed incorrect, due to practical weaknesses for its further completion; five (**5**) cases were, finally, decided not to fall within the competence of EMIDIPA, while four (**4**) were regarded as indeterminate.

The majority of administrative investigations (**27 out of 41**), that have been referred to the competent services by the Mechanism in order to be supplemented, concerned cases of violation of physical integrity/health (**about 68%**). According to the reviews of these cases, on the one hand, administrative investigators have not understood the importance of the principle of the reversal of burden of proof

adopted by the ECtHR, for the cases of persons under Authorities' control[5], and, on the other hand, they still do not search for expert witnesses, such as doctors and/or medical examiners, while, they do not adequately evaluate the medical reports in relation to the complainants and testimonies.

Moreover, in two (2) cases, the Ombudsman, having found a deviation from the operative part of the Independent Authority's conclusion with the absence of a specific and detailed reasoning, referred the relevant cases to the competent Minister of Citizen Protection, in order for him to proceed to legal action in his capacity as disciplinary head of the services.

Regarding the sanctions proposed through PDE or EDE conclusions, these relate to the following penalties: dismissal (1 case), leave with dismissal from duties (9 cases), imposition of a fine (9 cases) and reprimand (3 cases). According to these data, it becomes clear that for the vast majority of administrative investigations, case archiving is proposed. For the ECtHR, demonstrating the necessary strictness while carrying out police officers' disciplinary control will guarantee the prevention of recurrences of similar behaviors in the future[6].

The operation of EMIDIPA, as an independent and therefore impartial Mechanism for the investigation of arbitrary incidents that fall within its competence, contributes to the conduct of substantial and thorough administrative investigations *"to ascertain the circumstances in which the events took place and the identification and the punishment of perpetrators"*,[7] and consequently reverse the sense of impunity and enhance citizens' confidence in the credibility of the disciplinary procedure.

The following sections analyze the irregularities identified in internal investigations which were examined within 2021 by the Mechanism, with the aim of avoiding similar shortcomings and conducting more effective administrative investigations in the future.

5. ECtHR judgments, inter alia *Zelilov* v. Greece, 24.05.2007, *Bekos Koutropoulos v. Greece, 13.12.2005, Aksoy v. Turkey, 18.12.1996: "Where an individual is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation as to the causing of the injury, failing which a clear issue arises under Article 3 of the ECHR"*.
6. ECtHR judgment, *Sidiropoulos and Papakostas v. Greece*, 25.01.2018.
7. ECtHR judgments *Konstantinopoulos v. Greece*, 22.11.2018, *Makaratzis* v. Greece, 20.12.2004, para. 74: *"The investigation must be capable, firstly, of ascertaining the circumstances in which the incident took place and, secondly, of leading to the identification and punishment of those responsible. This is not an obligation of result, but of means"*.

3

ASSESSMENT AND CONCLUSIONS FOR 2021

3. Assessment and conclusions for 2021

The first immediate and general conclusion regarding the cases referred to the Mechanism in 2021, and those processed during the same year, does not represent a reversal compared to those recorded in previous special annual reports. The persistence or reproduction of the same dysfunctions during disciplinary procedures, apart from the difficulty or time involved in any institutional and practical adjustment, raises reasonable concerns about the difference between the law and the manner or degree of its application, a finding at risk of being transformed into a distinction between "law in practice" and "law on paper"[8].

a) As to the victims of the security forces arbitrariness

In 2021 as well, a significant number of cases, which were either forwarded or submitted as citizens' complaints directly to the Ombudsman, indicate that young people, often minors, are the victims of police arbitrariness. Although the majority of investigations into these cases remain open, and therefore their completeness is to be ascertained, it is worth noting that the majority of these cases concern allegations of illegal offences of physical integrity and /or personal freedom, including those relating to torture and other degrading treatment, or sexual freedom (**F. 296931, F. 294871, F. 300698, F. 304790, F. 296766, F. 291501, F. 309065, F. 309067, F. 309068, F. 307705, F. 293675, F. 293295, F. 295452, F. 312328, F. 311342, F. 306894. F. 307705**).

The fact that complaints of police violence, unlawful transfers to the police departments, and/or arrests in the context of police controls regarding compliance with the measures taken due to the pandemic concerned young citizens to a large extent, argues for the allegation of their generalized targeting, while in addition, contributes to the view that pandemic controls have also functioned, mainly, as a means for intensifying police repression. In such a context, it is not only the legitimate nature of law enforcement that is judged, but also the choice to entrust the control of administrative measures to an authority that is predominantly responsible for the prevention and suppression of crime, considering it analogous to criminal justice policy (**F. 289415, F. 294876, F. 299498, F.295300, F. 262531,**

8. Chambliss W., 1993, "On Lawmaking", in W. Chambliss & M. Zatz (eds) *Making Law – The State, the Law and the Structural Contradictions*, Indiana University Press, Bloomington, Indianapolis.

F. 289415, F. 288914, F. 290905, F. 292978, F. 288646, F. 278405, F. 289532, F. 295453).

The practices of undressing, even in public, mocking or harassing and shifting of responsibility, through the use of the flexible notion of the alleged victims' threat, often accompanied by accusations of resistance or disobedience, on the one hand commences a parallel ethical neutralization of the disciplinary responsibility of the investigated police officers, and on the other hand contributes to the "weakening" of their victimization[9] (**F. 271383, F. 271379, F. 270707, F. 282183, F. 274521, F. 262531**). Routinely, all these instances contribute to the strengthening of the "grey number" of arbitrary incidents, which enhances the fear of the victims to be involved in formal procedures or to be further targeted, constituting a decisive hampering factor of the right of petition. The incomplete and therefore ineffective investigation carried out in such cases, resulting in either the non-finding of the alleged victim, or the non-identification of the investigated police officers, or both, contributes to the same direction (**F. 288912, F. 271381, F. 272697, F. 296764**).

When the victim's young age is accompanied by the national, ethnic or racial parameter, the complaint can even extend to violations of the right to life (**F. 297918, F. 306749, F. 304783**). Accordingly, when the gender dimension is added, there is a reinforcement of the aspect that the chances of being victimized[10] depends on the magnitude of the person's social vulnerability, a fact that is confirmed by ECtHR's case- law[11]. Thus, when a young foreign woman is arrested with two of her compatriots, she is considered, by definition, more suspicious than the other two, and consequently- with no other reason- she is more likely to undergo a body search, including the removal of underwear (**F. 258681**).

In any case, aliens still constitute a distinguishable group among the alleged recipients of police arbitrariness. Complaints, in most cases, also concern violations of physical integrity and personal freedom, often in combination with torture (**F. 296768, F. 297188, F. 304131, F. 306293, F. 306583, F. 312483, F. 298759, F. 306005, F. 291505, F. 293294, F. 301008, F. 307094, F. 297919, F. 290632, F.**

9. Sykes G. & Matza D., 1957, "Techniques of Neutralization: A Theory of Delinquency", in *American Sociological Review*, v. 22, p. 664-670.
10. Young J., 1986, "The failure of criminology: The need for radical realism", in Young J. & Matthews R. *Confronting Crime*, Sage Publications.
11. ECtHR judgment, BS v. Spain, 24.07.2012 on the issue of intersectional discrimination, in breach of Article 14 of the ECHR, in combination with Article 3 regarding police officers' conduct against a woman of African descent.

299874, F. 306395, F. 310193, F. 307703, F. 295387, F. 292904, F. 297928, F. 294882, F. 303845, F. 308689, F. 300544, F. 301919, F. 306005). Systematic targeting of aliens refers to perceptions of underdeveloped or imperceptible threat[12], even fueling allegations of illegal deportations (**F. 297117, F. 283807, F. 291051, F. 294506, F. 291051, F. 299926, F. 294363, F. 308485**). Likewise, there are records that show that they are disregarded as witnesses, a fact that leads to the avoidance of their search during the disciplinary procedure, or to their testimony's neglect as a whole. It must be noted that similar complaints and practices frequently extend to tourists, causing relevant convictions against the country[13] (**F. 306581, F. 308689, F. 308686**). On the contrary, those living in reception centers, asylum seekers, or administratively detained aliens, are by definition subject to a special relationship of domination mainly due to the restriction of their freedom. In those cases, their fear of being targeted and even retaliation, diminishes the possibility of them referring to the Authorities and leads to the assumption of an even bigger number of undefined /uninvestigated incidents of police arbitrariness.

A similar approach, although in fewer cases, is made evident when it comes to complaints being reported by persons who have been subject to police ill treatment due to their racial origin (Romani) often related to both physical abuse and misuse of weapons. (**F. 273988, F. 305140, F. 306749, F. 298754, F. 297207, F. 293309, F. 293309**). Investigation in such cases is so poor and inadequate that occasionally complaints of serious ill treatment (beatings) are being concealed from the disciplinary control carried out for illegal use of weapons even when strong evidence of the ill treatment, such as medical reports deriving from the transfer of the alleged victims to a public hospital, takes place (**F. 250035**).

An additional separate category of victimization due to police arbitrariness tends to be formed based on gender and it concerns both national and non- national women. Once again, the majority of complaints concern violations of physical integrity, as well as degrading treatment, and sexual harassment (**F. 300290, F. 302054, F. 302054, F. 302872, F. 304132, F. 290617, F. 307323, F. 307706, F. 292439, F. 301698, F. 307545, F. 294388, F. 312483, F. 292978**). The withdrawal of the alleged victim and the complete reversal of his/her initial complaint are left out of the investigation in these cases (**F. 262869, F. 295451, F. 268504**). On the contrary, in cases where the complaint is not withdrawn, its incomplete investigation leads to its undermining (**F. 267196, F. 245785**).

12. Karydis V., 2010, "Aspects of social control in Greece - Moral panics, Criminal Justice", in *Media & Crime*, v. 20.

13. ECtHR judgment, *Andersen v. Greece*, 26.04.2018.

b) As to the type of disciplinary control

In 2021, the type of disciplinary control that almost monopolizes the investigation of complaints, corresponds to the Preliminary Administrative Inquiry (PDE), reserving the right to exception for EDE. This preference is being increased, given that the complaints regarding the illegal use of firearms, following a relevant judgment issued by the ECtHR against our country[14] are now subjects of Administrative Inquiry Under Oath (EDE), pursuant to No. 7100/14/4-θ΄ / 25.01.2008 Circular Notice of the Chief of the Hellenic Police Force. On the contrary, the reasons for such a unilateral choice remain suspended if we also take into consideration that for 2021 the majority of the Mechanism cases concerned complaints regarding ill treatment by police officers, while those for torture and other degrading conduct show an upward incline.

The primary basis that advocates for the obsolete choice is identified in the conclusive character of prohibition under art. 3 of the ECHR, which has been recognized by the ECtHR's case- law, even in the most complex cases, including terrorism and organized crime, rightly forming the guaranteed core of the Convention. To this end, the Court requires a full, substantiated, and effective investigation, based on the reversal of the burden of proof, the hierarchical and substantive distance of those conducting and undergoing investigation, the promptness of the procedure, the use of sufficient and appropriate evidence and the collection of unrebutted presumptions of fact which bring about a reversal of the complainant's allegations. Otherwise, the incomplete and ineffective investigation establishes a presumption of violation of the aforementioned Article against the judged State.

However, even if this basic principle is set aside, the insistence on not ordering an EDE and consequently avoiding disciplinary proceedings, especially in very serious cases (**F. 299498, F. 270704**), is not in line with the severity of the complaints, which by definition require investigation by more experienced police officers, usually provided through EDE conducting. On the contrary it leads to a discrediting of strong evidence, such as medical/forensic reports, eyewitnesses or even video footage, and their non-recognition as clear indications, the assistance of which would automatically order the conducting of EDE, in accordance with the provisions of art. 26 para. 1 of PD 120/2008. In fact, this perseverance remains unaffected even after the relevant Ombudsman's recommendations or remarks. It is characteristic that even in cases where serious complaints regarding torture

14. ECtHR judgment, *Celniku v. Greece*, 05.07.2007.

were mentioned, and the incomplete investigation, as well as the unjustified deviation from relevant recommendations of the Ombudsman led to the referral of the file to the Minister while the case was pending before the ECtHR, no internal disciplinary proceedings were conducted. On the contrary, the only additional action that was ordered, concerned the completion of the originally ordered PDE, which is still pending (**F. 237463**).

One of the consequences of this tactic raises questions regarding as to ensuring proportionate and deterrent disciplinary penalties. Given that the type of disciplinary procedure predisposes towards the context of the provided penalties, the exclusivity of preliminary investigation of even serious complaints entails the imposition of lower disciplinary penalties, as provided for by art. 24 para. 5 of PD 120/2008. This further means that the fixed choice of ordering a PDE for the majority of the internal investigations even in cases of tortures, specifies the scope of disciplinary responsibility, when/if the latter is attributed[15].

The significant extension of the disciplinary procedure plays a key role in cases where the completion of PDE does not lead to disciplinary liability but to the recognition of the necessity of conducting an EDE, and even more when this conclusion derives from existing evidence which was neither acquired nor added during the investigation conducted. The importance of time that has elapsed in the meantime and the corresponding slowdown of the control is related on the one hand to the regime of service uncertainty that the investigated police officers are subject to, but mainly, to the risk of losing serious evidence and therefore to a faulty and ineffective control, further reinforcing the unclear number of police arbitrariness and the possibility of additional judgments against the country at the same time.

The practice of interdependence between the disciplinary procedure and the criminal procedure points to the same direction, contrary to the legislation,[16] interna-

15. Regarding this point, it is worth mentioning that the ECtHR., in judgments against our country has already highlighted that: *"important factors for an effective investigation that make it possible to determine whether the authorities were willing to identify and prosecute those responsible are: the promptness with which it is carried out; in addition, the outcome of the investigation and the criminal prosecution it leads to, including the sentence imposed, as well as the disciplinary measures taken are crucial. It is essential to maintain the deterrent effect of the established judicial system and the role it is obliged to play in preventing violations of the prohibition of ill-treatment"*. See ECtHR judgment *NZ v. Greece* 17.01.2012, ECtHR judgment *Sidiropoulos and Papakostas v. Greece* 25.01.2018.

16. See art. 48 PD 120/2008.

tional[17] and national[18] case- law as well as the theory[19]. The instrumentalization of criminal law, which is attempted in such cases, either through the suspension of disciplinary procedure due to pending trial or criminal proceedings, through its archiving due to the cessation of criminal prosecution or due to abrogation of the unjust, or through the selective identification of disciplinary case- file with one of the parallel and relevant criminal cases, does not simply abolish the institutional autonomy and independence of the disciplinary procedure, in essence rendering it supplementary to the criminal procedure and sometimes even into a pretext reaching the point of influencing the criminal decision-making. In such a context, the above-mentioned doubts and criticism regarding institutional transparency and efficiency are justified.

c) As to the penalties of disciplinary control

The vast majority of disciplinary cases investigated by EMIDIPA in 2021 in relation to this section, as well result in an archiving recommendation, which in turn is based on the non-recognition of disciplinary liability, and consequently in the non-imposition of disciplinary sanctions. Notably, out of one hundred and thirty-eight (**138**) cases, which were processed by the Mechanism during said year, penalties were proposed for only twenty-two (**22**) cases. Of this total, the proposed penalty in eight (**8**) cases concerned the imposition of a fine, while in three (**3**) the relevant proposal suggested the penalty of reprimand.

In addition, in three cases which concerned the above proposals for the imposition of fines and reprimand, the Ombudsman noted that disciplinary investigation as well as disciplinary liability fell significantly short of documentation, given the contradictions distinguished between the reasoning and the operative part of the disciplinary report. Thus, the investigated police officers were being judged as disciplinary accountable, although based on the conducted disciplinary investigation their conduct did not deviate from the regulatory requirements and the official functions. After the relevant Ombudsman's referral findings, their criminal liability was finally attributed.

17. ECtHR *Kemal Coskun v. Turkey* 23.03.2017, *Mullet v. France* 13.09.2007.
18. Council of State plenary session 4662/2012.
19. Papadamakis A., 2016, "The relationship between disciplinary procedure and criminal proceedings", in *Crime and Criminal Repression in a Time of Crisis - Volume published in honour of Professor N. Kourakis* A.N. Sakoula Publications.

The cases being processed by the Mechanism in the same year show a similar trend. At the same time, even when complaints regarding torture end up being investigated, usually pursuant to relevant criminal prosecution and/or in view of a relevant prosecution before criminal proceedings, the relevant order to carry out or supplement the disciplinary control- even when it happens to be equated with EDE- primarily refers to points (h), (l) and (m) of para. 1 of art. 10 of PD 120/2008, while almost no reference is made to point (c) of the same provision, regarding *"constitutive acts with respect to torture and other violation of human dignity within the meaning of Article 137 of the Penal Code"*. As a result, the provided penalties tend to have a minor rather than major nature, thus in any case the possibility of suspending the investigated police officers is excluded, pursuant to art. 15 para. 2 of PD 120/2008. In this context, it is astonishing that the prosecution and the crime type are not evaluated for the application of the aforementioned measure of suspension. This is also intensified due to the frequent- as already stated- practice of disciplinary and criminal proceedings concurrence (**F. 292984, F. 292900, F. 303838, F. 305142**).

Secondly, another result is the risk of non- application of art. 26 para. 4 of PD 120/2008 or the relevant art. 1 para. 1 of PD 111/2019 in case the ordered investigation corresponds to an EDE or PDE respectively, and therefore the investigation of the corresponding cases shall not be assigned to an officer of a different but equivalent Directorate or Service from the one that the investigated police officers belong to. The possibility of eliminating that safe distance between those conducting the investigation and those being under investigation leads to the abolition of the required impartiality and independence of control even in the most serious cases regarding severe complaints (**F. 293529**).

d) As to the guaranteed function of EMIDIPA

The content of the above assessments and conclusions and their durability over time, despite the Ombudsman's constant remarks, largely justify the difficulty of establishing a stable relationship of confidence between citizens and the police.[20] Inadequate disciplinary control does not serve the principles of legality, necessity and proportionality that should characterize police action, precisely because of its nature of interfering directly with fundamental, individual rights, and therefore

20. Vidali S., 2012, *Police, Crime Control and Human Rights*, Publication: Nomiki Vivliothiki, Athens.

does not guarantee the principles of transparency and accountability.[21] The deficit punishment of disciplinary misconduct determines the corresponding lack of victim identification.

The total number of relevant judgments that have already been issued by the ECtHR against the country[22], but also of the pending appeals[23], with police violence representing a significant percentage thereof, does not simply function as an additional argument of the above assumption, but also as a reminder of the guaranteed function assigned to EMIDIPA. Its institutionalization in 2016 and the strengthening of its powers in 2020 undoubtedly constitute steps towards the establishment and operation of a fully independent body for the investigation of complaints against the police and at the same time a clear intention on the part of the legislature towards police violence degradation. Towards achieving that goal, the positive course that the Mechanism seeks to purse is identified in the steady annual increase of cases, which are forwarded by the Hellenic Police in order to be investigated, and even in the annual increase of complaints, which are entrusted to the Mechanism directly by citizens themselves.

Nevertheless, the practical strengthening of the Mechanism, both in terms of human and material resources, is still needed. Similarly, in its latest Report presented in 2020, CPT had already expressed its reservations as to whether the Mechanism could be fully effective and recommended that much more resources and additional powers should be made available to EMIDIPA.

The Mechanism's legislative immunity without, at the same time, a reinforcement of its human and material resources taking place, in fact nullifies the very purpose of the legislator.

21. Chouliaras A., 2021, "The phenomenon of 'impunity': conceptualization, causes and contemporary manifestations in Greece", *in Art of Crime*, vol. 11.

22. According to the data presented to the Parliament, i.e., to the Special Permanent Committee on monitoring the decisions of the European Court of Human Rights, by the Greek judge of the ECtHR, I. Ktistakis, 984 judgments against the country have been issued since 1991. See for instance selection of recent case- law and list of decisions from 28.12.2014 to 27.12.2019 edited by E. Stamouli in the bulletin of the Greek Society for the Study of Crime and Social Control, *Egklimatologoi*, vol. 5, January 2020, p. 1214.

23. According to the same data, the number of appeals pending before the ECtHR amounts to 2.214.

4

THE INTERVENTIONAL ROLE OF EMIDIPA

4. The interventional role of EMIDIPA

4.1. Investigation of checks and incidents of police arbitrariness

4.1.a. Cases of 17th November 2019

The annual report of EMIDIPA for the year 2020, had already made reference to a series of Preliminary Administrative Inquiries (PDE), which were ordered based on specific incidents of ill-treatment or injury of citizens in November 2019. Those investigations included incidents that took place on the anniversary of the Athens Technical University uprising and which have been of a major concern for public opinion, due to their widespread publicity both in printed and electronic media. In this context, the Ombudsman had emphasized from the beginning the conditions of a thorough investigation and the guarantees of impartiality prescribed by the relevant case- law and had asked to be notified in advance of the police officers involved, the relevant camera footage, recorded conversations with the control center, as well as relevant forensic reports and/or medical opinions.

The present report presents the Mechanism's assessments regarding the findings of concrete disciplinary investigations that were carried out and evaluates the response of the Hellenic Police both in terms of legislative and jurisprudential requirements, as well as in terms of the Authority's remarks.

Case F. 271381 deals with an incident that took place on 21.11.2019. A twenty-year-old student who was waiting at a bus stop on Mpoumpoulinas street with a number of other citizens, came face to face with two police buses that stopped in front of him. He found himself surrounded by a thirty-member squad of riot police (MAT), who without any explanation proceeded to a check of his ID card as well as body search. Then, without any further evidence, he was forced to remove his clothes in order to be searched thoroughly and beneath his underwear, together with various offensive comments. After intimidation and threats, he was led to a nearby private parking area where he stayed without being allowed to contact anyone, while police officers kept cursing at him, intimidating and taking pictures of his ID card. Finally, he was driven to the Police Department of Exarcheia by police car, where he had remained for three hours before given permission to leave.

The disciplinary investigation that was carried out concluded that there was no involvement of police forces, thereby implicitly denying this incident. Assessing the whole investigation file, EMIDIPA noted the improper investigation of the case, due to a series of omissions which relate to an inadequate search of evidence. Namely, the following were noted: a) there had been no search and collection of video footage despite it being critical- according to the ECtHR- for the investigation of the circumstances under which the reported incidents took place[24]; b) there had been no search and finding of witnesses, despite the fact that ECtHR's case- law has highlighted in many cases that the identification of witnesses is one of the most significant investigative steps during disciplinary investigations[25]; c) no summons had taken place and therefore there was no identification of the police officers involved, in spite of the identification of those police forces that were present in this particular place and time. In similar cases, the ECtHR has ruled that location and identification of police officers involved constitutes one of the criteria that the Court has deemed essential for the effectiveness of the investigation[26]; d) there had been no adequate search for the location of the complainant himself while at the same time no research had taken place and no copies from the Book of Offences and Incidents or even a relevant entry protocol of the Police Department of Exarcheia had been taken, so that it would be possible to search for citizens, who had been at the Police Station that date and that could be summoned to testify as eye witnesses. Likewise, a copy from the book of that day's detainees, who could be called as witnesses, was not sought.

Similar omissions were also identified in case F. 272697, which deals with an incident that took place on 11.11.2019, and was reported by a 22-year-old student. According to the latter, while she was walking along Patision street and specifically in the area of Pedion tou Areos, she was stopped by three police officers requesting her ID details. Responding to their requests and while she was about to show them her ID card, one of the police officers seized her bag, the second took her ID card and the third one ordered her to stretch her arms in order for them to carry out body search. In her objections to the reasons for conducting a body search, the said police officer, under a state of fear, forced her to a "superficial" examination, asking for the assistance of a female colleague of his. A new detailed body search followed without any

24. ECtHR judgment *Lapshin v. Azerbaijan*, 20.05.2021, *Magnitskiy and others v. Russia*, 27.08.2019.

25. ECtHR judgment, *X. & Y. v. Russia*, 22.09.2020.

26. ECtHR judgment, *Lolayev v. Russia*, 15.01.2015.

explanation, including all the complainant's body parts. Not satisfied neither by this second body search nor the answers she received; the female police officer ordered the complainant to take off her trousers. When the latter refused to do so, given that she was on Patision street, the female police officer repeated her order. The complainant still refusing to do so, asked to be shown a relevant warrant. Then, the female police officer pulled the complainant's one hand and led her to the restroom of a nearby store, blocking the door and forcing her to take off her trousers and her underwear. At that point, the female police officer threatened her with arrest because the complainant asked to go together to the nearest Police Department in order for the required explanation to be given in relation to the legitimacy of the body search that was carried out. Being afraid of other possible implications, the complainant left.

In addition to the similarities regarding the principal facts that the above cases present, there are also corresponding omissions in relation to the disciplinary investigation conducted later on. In this case as well, despite the internal investigation that was carried out, no witnesses or video footage were sought, the officers involved were not identified and barely any effort was made in order to find the complainant. It should be noted that the alleged victims of both the above cases proceeded with the disclosure of incidents without making their names public in fear of being further targeted. The same answer was given to the Authority upon its communication with written and electronic media which published these incidents.

On the contrary, case F. 200704 is based on a signed complaint and refers to an incident that took place on 07.11.2019 in the evening in Exarcheia area. The alleged victim was nearby a Café on Tositsa street, outside which at the time lots of people had gathered in order to protest against the blocking of the entrances of this area by police forces and the ban on access to it, while inside the Café there were about thirty people. The complainant attempted to leave due to tear gas and then a riot police officer kicked him and threw him down. Then, while he was down and immobilized on the ground, other police officers of the same squad came and started hitting him with batons. Eventually, he was taken to an indoor corner on Mpoumpoulinas street, near the Ministry of Culture. During his transfer, he was being constantly beaten, while the violence was intensified even more upon his arrival at this particular spot. At this point the complainant specifically refers to one of the police officers who were beating him, highlighting that he was the most violent of all, banging the complainant's head against the wall. The same police officer has allegedly given the order to take the complainant's clothes off. Then, the complainant

was thrown from one officer to the other, while at the same time they tried to take off his clothes, leaving him in his underwear.

They then threw him against the wall ordering him to stay there and started to search his clothes and bag. The aforementioned police officer having found his ID card and read his name, beat the complainant's head against the wall once more. Once again, the complainant was thrown from one police officer to the other being beaten and mocked while he was trying to pick up the things of his bag and wallet that police officers had thrown on the ground. This whole situation lasted for approximately five minutes when the above-mentioned police officer grabbed him, put him against the wall and taking off his underwear he touched the back of his body addressing him with extremely offensive and intimidating expressions[27]. This last incident lasted for about half an hour according to the complainant. When emergency police officers arrived, they told him to get dressed, handcuffed him, and put him in the police car. The complainant states that, upon his arrival at the State Security Sub-Directorate, he was beaten, swollen and limping on his left side. Police officers were already notified of his arrest, keeping him in an office separate from the other seventeen (17) detainees, who were then released.

Given the severity of the complaints in this case, the Ombudsman has suggested the option of immediately changing the ordered PDE to EDE. Eventually, the conducted disciplinary investigation and its subsequent supplementation did not remedy these substantive omissions, which primarily related to the collection of the required evidence, thus jeopardizing the impartiality and effectiveness of the investigation. More particularly, this disciplinary investigation was exclusively based on police officers' statements, the majority of whom were directly involved in the reported incidents, while in addition those statements were given in a verbal manner and not under oath, despite the Order- Circular of the Chief of the Hellenic Police No. 6004/1/22-κγ΄/14.10.2088, which recommends that the written procedure *"meet the requirements for an in-depth investigation of disciplinary cases"*. In this case as well, neither the crucial video footage was timely sought and thus received, nor other witnesses were searched for, although in the relevant criminal proceedings against the complainant, eyewitnesses were called and testified, confirming the complaint's content. The results of the medical examinations acquired after the alleged victim was transferred to a public hospital,

27. *"This is how men in green f... In Exarcheia we have junta, do you understand? If you are not slapped and f... You can't enter Exarcheia. We rule here".*

following his arrest, were not adequately evaluated, and taken into account. The reasons that led to the complainant's body search as well as his arrest were not investigated, given in fact that he was acquitted by the criminal court of all charges, based on which he was arrested.

Finally, although the disciplinary investigation alleges that there was no racist motive, no action was taken to substantiate such an allegation, despite the complainant's clear statements that link the incident to his identity and, contrary to the ECtHR's orders which stipulate that: *"When investigating violent incidents and, in particular, deaths at the hands of State agents, State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events.. Admittedly, proving racial motivation will often be extremely difficult in practice. The authorities must do what is reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of a racially induced violence[28]"*.

Case F. 271379 deals with a complaint which was submitted by a third person and not the alleged victim himself and was published without revealing the alleged victim's identity. According to the latter, on 17.11.2019 given the 46th anniversary of the Athens Technical University uprising, an eighteen-year-old student fell victim to police violence, while filming the events that took place in the area of Exarcheia, while being located on the terrace of an adjacent building. More particularly, the young student is said to have been beaten by police officers, who broke his toes and left him with a leg impairment and difficulty in urination.

In this case, the administrative investigation has searched and identified both the alleged victim, based on a press report, and the police officers involved in the incident, while in addition the conversation material between these police officers and the dispatch communication center was also sought. On the contrary, the omission regarding the search of the video footage was justified by the certainty of its deletion due to the expiration of seven days, provided for by the decision No. 58/2005 of the Personal Data Protection Authority (PDPA). The Ombudsman highlighted that in this case there was a selective interpretation of the PDPA's decisions, since Directive 1/2011 stipulates that the duration of keeping video records is in line with their purpose, specifically mentioning the obligation of their

28. ECtHR judgment, *Nachova v. Bulgaria* 26.02.2004.

three-month safeguarding, in cases of beating, while added that the same is also stipulated by the ECtHR's case- law[29].

Although the disciplinary investigation did not confirm the exact facts stated in the press report, it evaded addressing the issues that arose during its conduct concerning the injury of both the student in question and other young people who were inside the building, as well as whether the police forces' entry into the building was lawful or not. Regarding the issue of injuries, the Mechanism noted that no witnesses were sought from the residents or employees of the building, no testimonies were received from the lawyers who assisted the young people during their arrest or from their parents, as some of them were minors, nor the photographs taken during forensic analysis were provided.

Regarding the issue of the police raid inside the building, the Ombudsman noted that the entry of the investigated police officers in the common parts of the building was not done in the context of a legal investigation, since there was no relevant order - summon or criminal suppression due to "flagrante delicto". More specifically, for the entrance to the building in question the specific police forces did not invoke either the legal pursuit of the arrested, or the fact that they were seen committing a criminal act, but the fact that inside the building there were individuals who were not supposed to be there. Taking all this into consideration, the entry of the investigated police officers in the specific building did not meet the requirements set out in art. 241 of the P.C, while the subsequent arrest of the young people, who were found inside the building, does not remedy the previous lack of legal requirements. On the contrary it creates reasonable suspicions about its instrumentation, given the fundamental principle that the acceptable purpose of an investigation should not be the justification of any suspicion[30].

Case F. 271378 concerns an incident which took place on 14th November 2019 at noon and according to which the complainant citizen, while crossing Charilaou Trikoupi street and looking towards the police forces and the police bus lined up outside the PASOK political party offices, was subjected to an ID control as well as body search with shirt removal, public humiliation and harassment by the police officers. Then, although he had asked from the beginning to be transferred to the nearest Police Department in order to be

29. ECtHR judgement, *PÓSA v. Hungary*, 07.07.2020.

30. Koukloumperis N., 2020, "BVerfG 2 BvR 2992/14, 31.01.2020, Conditions for the legitimacy of domiciliary visitations- Money laundering - Suspicion of committing a serious crime, remarks", in *Criminal Justice* v.7.

searched, he was driven in an official vehicle to the Police Department of Exarcheia, from which he left a little later.

The disciplinary investigation carried out under this incident did not seek for relevant video footage or potential eyewitnesses but relied solely on the statements of both the police officers present and those directly involved, as well as the complainant's testimony. In fact, five months after the incident, the latter appears to partially withdraw from his initial complaint, considering the whole incident as a product of misunderstanding and excessive vigilance on the part of police officers, which, however, is justified by the prevailing circumstances in the wider area, stating that he does not want their disciplinary prosecution.

At this point, it must be noted that in the case of disciplinary law there is no proportional application of the provisions of penal law regarding prosecution of certain crimes that can only be initiated following a report made by the victim. Consequently, the disciplinary proceedings may continue even if the victim has withdrawn his/her statement.. This is because, contrary to criminal law, which aims to prevent and suppress crime for the benefit of social peace and the stability of social life, the core of disciplinary misconduct is the breach of official duty, as stipulated by art. 4 of PD 120/2008, and aims to maintain the supremacy of the service. Taking this into account, the LCS in its opinion No. 372/2009 clarifies that: *"The disciplinary procedure is obligatorily initiated by the administration in the cases provided by law and aims at the smooth operation of services, the observance of the principle of legality and the defense of Public Interest. Therefore, in the context of the disciplinary procedure, it is inconceivable that there should be a dispute between the person who complained of an unlawful act and the administrative body against which administrative control is exercised..."*. In this light, both the conduct and the outcome of the disciplinary procedure do not depend on the will of the alleged victim.

Case F. 272727 is also about a citizen's harassment. More specifically, a foreign individual reported that he heard the alleged victim stating on a local network that on November 17, 2019, while he was filming in the area of Exarcheia as a journalist for an electronic newspaper he was attacked by police.

As already mentioned in last year's EMIDIPA annual report, the disciplinary investigation that followed had been considered sound in the first place with the alleged victim reporting that the seriousness of beatings was negligible and that in any case they ceased as soon as he declared his professional capacity. Nevertheless, the inclusion in the disciplinary file of other reports and complaints, different from the investigated case, as well as the claim in the relevant disciplinary

conclusion that no other citizen was attacked were outside the narrow scope of the relevant investigation, which concerned only the attack on the specific journalist, and thus were neither related nor further investigated.

The Hellenic Police responded immediately to the Ombudsman's remarks, ordering the supplementation of the preliminary inquiry in order to investigate all complaints.

Case F. 274521 refers to an incident, which was reported by three alleged victims of police arbitrariness, and which took place on 17.11.2019 at around 20:30 near the Square of Exarcheia. Although not all complainants had any personal connection to each other, all of them report that at this time, the first two, returning to the house of their mutual friend from which they had left a few minutes earlier in order to go to one of the kiosks in Exarcheia Square, and the third, passing through the same square with the accompaniment of a friend, also heading to the house of their mutual friend, were found trapped in the violent incidents, which started at that moment in the square due to tear gas fired by the police and the arrival of many police forces. The complainants then report that police officers who surrounded them proceeded to indiscriminately conduct mass arrests, using excessive force with baton beatings, kicks and punches even to the head. One of them in fact reports that while she was lying on the ground, the police kicked her ankles, thus preventing her from getting up, while one of them forcibly stepped on her arm. Then, after being handcuffed, they were taken along with other detainees to an underground private parking lot at 18 Mpoumpoulinas Street.

There, all those arrested were forced to remain on their knees, while being addressed with degrading comments and their ID cards taken. Police officers were photographing both their ID details and their faces using their private mobile phones. They were then taken to GADA, where they were detained on the sixth floor for several hours without knowing the reason for their arrest, while the police officers prohibited any communication with both their parents and their lawyers, as well as access to water and use of toilet. The complainant with the injured arm stated that despite having requested to be transferred to a hospital due to the severe pain she was in, she was only allowed to after waiting hours for her lawyers to be allowed to enter the place and request it for her. Finally, two of the complainants stated that during their stay in GADA they underwent a body search, having their clothes removed while being in an area with open and unlimited access to other police officers.

In this case as well, the disciplinary investigation carried out was particularly deficient, despite the recommendations made by the Authority prior to its completion which stressed the need to gather specific evidence as well as to investigate specific allegations. However, the disciplinary investigation was limited in scope and means, and was based solely on the affidavits of the police officers, the majority of whom were the chiefs of the ten squads that were directly involved in the incidents and without further explanation as to their selection criteria. It was also impressive that some of the police officers who were summoned did not appear to testify, while the names of others were not even mentioned by their service to the investigator responsible, without any reason being given for such a refusal nor any comment on the legality of this action thereof. In any case, no eyewitnesses or other key witnesses were sought out or summoned to testify, no video footage was sought or collected, and the material that was sent by the Ombudsman was not substantially assessed. Respectively, the relevant medical report that confirmed the injury of one of the complainants was neither taken into consideration nor evaluated. No photographs taken during forensic marking were provided, while the telecommunications confidentiality was improperly presented as the reason for non-submission of police conversations with the coordination center, despite the fact that the Ombudsman has repeatedly pointed out that confidentiality relates to the protection of the citizen's private life and personality which is expressly stated in art. 1 of PD 47/2005.

Finally, the necessity and legitimacy of body search, that two of the three alleged victims had been subjected to, in combination with the discrimination against them due to their gender, remained out of the investigation's scope since the third complainant did not proceed with a corresponding claim. Similarly, the relevant arrest reports were omitted, and their detention conditions were not assessed, while the complaint regarding photographing their ID cards and the complainant's faces using personal mobile phones were not thoroughly investigated. In such a context, the Mechanism referred the case back, since the ongoing investigation did not conclude as to the extent of the reported incidents, or the identity of the police officers involved.

The immediate character of the disciplinary control ordered by the Hellenic Police as well as the fact that the disciplinary investigation was exclusively addressed via PDE constitute common points for all the above cases. Despite what is stipulated in art. 24 para. 3 of PD 120/2008, in most cases these investigations have not been successful as to the collection of the required evidence while the relevant video footage was not sought in none of them. This directly affected the clarification of facts, the finding of those police officers involved and even of the alleged victims.

Moreover, in some cases, serious evidence such as medical reports was not evaluated, or cross evidence - based analysis was not even attempted, thus resulting to equating the course of administrative investigations mostly with the alleged victims' behavior. Such a course, however, on the one hand deviates from the purpose of disciplinary control, which focuses on the conduct of the investigated police officer and not the alleged victim, causing a shift of responsibilities, and on the other hand produces contradictory results, ignoring relevant criminal court judgments that do not define such conducts as criminal offenses. Although the internal investigation of the cases was generally completed within a reasonable time, delays were observed in the transmission of the relevant disciplinary case files to the Ombudsman. Finally, the investigator proposed the archiving of all the above cases. The Ombudsman on the other hand requested the supplementary investigation of four (4) cases, while two cases, although their documentation was considered incomplete, were archived due to being practically impossible for evidence to be found. Only in one of these cases the Ombudsman opted for its archiving, noting that the disciplinary investigation was complete, making general comments for future investigations.

In this light, the Ombudsman reiterated that the observance or not of procedural requirements provided in PD 141/1991, regarding body search, is not at the discretion of the parties and that failure to comply with the requirements of the law constitutes a violation of personal freedom[31]. Avoiding infringing on the decency and dignity of the individuals searched constitutes an elementary obligation of police officers and is not in itself sufficient to legitimize the conduct of personal search by police officers, without complying with the existing legal provisions. The mere presence or passing by of citizens from a certain place does not make

31. The Ombudsman's opinion regarding the provisions of PD 141/1991, which regulate body search, has long been expressed. According to it, *"this legal framework is unacceptably unclear and uncertain in the case of individual rights restrictions. Moreover, its formal constitutionality within the domain of legislative delegation is even disputed, given that the relevant provisions have been included in a presidential decree (141/91) "Responsibilities of bodies and official actions of the staff of the Ministry of Public Order", which is based on delegated legislation that only concerns the Organization of the Ministry (L 481/84), despite the fact that according to the Constitution (art. 5 para. 3: "... or otherwise confined except when and as the law provides") they should have been introduced by formal statute. Based on these remarks, in the Annual Report (of the year 2002) pursuant to art. 3 para. 5 L 3094/2003, the Ombudsman has already suggested from the outset the drafting and adoption by formal statute of a modern and clear institutional framework"*. See Conclusion, *"Subject: Legal Conditions for Arrests and Police Investigations"*, 30.06.2003, p. 6 https://old.synigoros.gr/resources/docs/por_16024_2002_da.pdf.

them suspects from the outset, since they are not required to justify their physical presence in a public place to a certain "legal" purpose[32].

In support of this recommendation, the Ombudsman additionally referred to the ECtHR's case- law, according to which the use of the coercive powers conferred by the legislation to require an individual to submit, anywhere and at any time, to an identity check and a detailed search of his person, his clothing and his personal belongings, amounts to an interference with the right to respect for private life, according to art. 8 of the ECHR. Such an interference is justified by the terms of paragraph 2 of Article 8 only if it is *"in accordance with the law"*, pursues one or more of the legitimate aims referred to in paragraph 2 and is *"necessary in a democratic society"* in order to achieve the aim or aims. In this context, the Court considers it is necessary for a police officer to demonstrate the existence of any reasonable suspicion against the person subjected to the measures. Otherwise, the domestic law does not provide adequate safeguards to offer the individual adequate protection against arbitrary interference and thereby, the measures complained of cannot be "in accordance with the law" within the meaning of art. 8 of the ECHR[33].

According to art. 5 para. 1 of the ECHR and ECtHR's settled case-law a person's detention must be lawful. As highlighted, the ECHR here lays down the obligation to conform to the substantive and procedural rules thereof. Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness. Furthermore, the list of exceptions to the right to liberty set out in Article 5 § 1 is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim of that provision, namely to ensure that no one is arbitrarily deprived of his or her liberty. Any lack of a detention base constitutes an illegal detention, regardless of its duration[34].

Furthermore, ECtHR has ruled that body search involving forced removal of clothes is a powerful measure, which implies a certain level of distress, and should therefore be carried out *"in an appropriate manner, with due respect for human dignity and for legitimate purpose[35]"*. Otherwise, forced removal of clothes

32. The relevant remarks have already been made by the National Mechanism for the Investigation of Arbitrary Incidents in relation to incidents that took place in 2019 and are included in the respective Annual Report of 2019, p. 35, 37.

33. ECtHR judgment, *Vig v. Hungary*14.04.2021.

34. ECtHR judgment, *Kerem Ciftci v. Turkey* 21.09.2021.

35. ECtHR judgment, *Roth v. Germany*, 22.10.2020.

may constitute degrading treatment, and therefore fall within the scope of art. 3 of the ECHR. Among the criteria set by the Court in this regard is a citizen's forced removal of clothes that fulfilled *"by touching the private parts of the body"* and *"being paraded in public"* [36].

The ECtHR's case- law concludes to the same violation of art.3 of the ECHR and when forced removal of clothes has no investigative value, and therefore does not contribute to the lawful purpose of police control, it shall be presumed that in such cases the sole purpose of its conducting is to cause shame and humiliation to the individual subject to it. Disparaging remarks, insults and threats that may accompany body search, along with forced removal of clothes, are taken into consideration as additional evidence of abuse.

The Ombudsman has once again referred to the ECtHR's case- law, according to which the cases of complaints regarding serious ill-treatment of a person, while he/she is in custody or under police control in general, produce a strong presumption of violation of art. 3 of the ECHR, due to the de facto authoritarian relationship, reversing, at the same time, the burden of proof. It is clarified in detail that *"in respect of a person who is deprived of his liberty, or, more generally, is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is, in principle, an infringement of the right set forth in Article 3 of the ECHR"*[37]. The "gratuitous" violence, that is, violence that is not absolutely necessary for the performance of a duty, is considered to be aimed at punishment or to arouse feelings of fear and humiliation and is therefore considered a clear indication of the purpose of torture.[38] The Court underlines that such an indication is reinforced by the fact that the protection of human dignity is absolute and, consequently, any relativization thereof and for any reason is inconceivable. In fact, the conclusive nature of prohibition stipulates that it is independent from the individual's conduct and the nature of the offense he/she may have committed[39].

36. ECtHR judgment, *Zherdev v. Ukraine* 27.04.2017.
37. ECtHR judgment, *Bouyid v. Belgium*, 28.09.2015.
38. See ECtHR judgment, *Dedovsky et al. v. Russia*, 15.08.2008. See also Symeonidou - Kastanidou 2009, "The concept of torture and other violation of human dignity in the Penal Code", *Poinika Chronika*, v. 59/2009.
39. *"As the prohibition of torture and inhuman or degrading treatment or punishment is absolute, independent of the victim's conduct, the nature of the offense allegedly committed by the applicant is irrelevant to the purposes of Article 3."* ECtHR judgment. Saadi v. Italy, 28.02.2008.

It is specifically mentioned that: *"Even in the most difficult circumstances [...] the Convention [ECHR] unequivocally prohibits torture and inhuman or degrading treatment or punishment ... Article 3 provides for no exceptions, and no derogation is permitted under Article 15 para. 2*[40] *[...]. The Convention unequivocally prohibits torture and inhuman or degrading treatment or punishment, regardless of the victim's conduct*[41]*"*.

Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. *"that usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these aspects, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition set forth in Article 3. It should also be pointed out that it may well suffice that the victim is humiliated in his own eyes, even if not in the eyes of others.*[42]*"*

In addition to these general principles, however, the Court has explicitly recognized that the concept of torture specifically includes the following cases: beatings with rubber batons on detainees, foot whipping (falaka), the Palestinian hanging, cause of suffocation during interrogation, severe beatings, dragging by the hair and tripping by police officers in a corridor, insertion of a police baton in the victim's anus, head injuries caused by beatings, dizziness, severe headache, swelling and tenderness in the nose, as well as difficulty maintaining the focus of the eye, tying the victim's wrists so as to cause physical injury, and prolonged exposure of a person (e.g. his bare feet) to cold (by walking on water or snow without shoes)[43].

The absolute character of prohibition set by art. 3 of ECHR against such behavior is reflected in addition, by the requirement of the ECtHR that the administration *"shall provide a satisfactory and convincing explanation by producing evidence establishing facts which cast doubt on the account of events given by the victim".* Regarding the content of the logical and convincing explanations, the ECtHR gen-

40. ECtHR judgments, *Selmouni v. France*, 28.07.1999, *Assenov and others v. Bulgaria*, 28.10.1998.

41. ECtHR judgment, *Chahal v. United Kingdom*, 15.11.1996.

42. ECtHR judgment, *Tyrer v. United Kingdom*, 28.04.1978.

43. See Symeonidou - Kastanidou E., 2009, op.cit., Margaritis M., 2014, *Penal Code Interpretation - Application*, PC, Sakoulas.

erally applies the rule of proof "beyond reasonable doubt"[44], while in cases where the proof may derive from a combination of strong, clear and consistent conclusions, these must be drawn on the basis of irrefutable and strong evidence. The burden of proof, however, is on the authorities[45].

Conversely, the ECtHR warns that the omission of such explanations may constitute a sufficient basis for adverse judicial judgment by the ECtHR for the accountable state, which *"is justified by the fact that the persons held in detention are in a vulnerable position and the authorities have a duty to protect them[46]"*. These explanations practically constitute an application of Article 1 of the ECHR and refer to the obligation for an effective formal investigation: *"This investigation should lead to the identification and punishment of those responsible. If this were not the case, the general legal prohibition of torture and inhuman and degrading treatment and punishment, despite its fundamental importance would be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity[47]"*. It is also noted that *"the authorities should always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions[48]"*. For this reason, they must take all reasonable steps available to them to secure the evidence concerning the incident. Especially when the investigation concerns a complaint of a person's injury while in detention or under general police control, it must be thorough and effective: *"Any omission in the investigation, which undermines the possibility of finding the cause of the injuries or the identity of the persons responsible, jeopardizes the compliance with this obligation for a comprehensive and effective investigation"*. Therefore, the ECtHR concludes that the police investigation on the conduct of a police officer which is mainly limited to police statements, cannot be independent and, therefore, effective[49].

The ECtHR comes to the same conclusion even when the events to be investigated take place in the context of widespread violence, demonstrating the need to take the necessary measures as to ensure that an independent and effective

44. ECtHR judgment, *Ireland v. United Kingdom*, 18.01.1978.

45. See Judgments: ECtHR, *Salman v. Turkey*, 27.06.2000, *Popa v. Moldova*, 21.09.2010.

46. See, for instance ECtHR judgment, *Salman v. Turkey*, 27.06.2000.

47. ECtHR judgment, *Assenov et al. v. Bulgaria* 28.10.1998.

48. ECtHR judgment, *Mikheyev v. Russia*, 26.01.2006.

49. ECtHR judgment, *Emin Huseynov v. Azerbaijan*, 07.05.2015.

investigation is carried out and to overcome obstacles or constraints regarding the effectiveness or delays of the investigation. The relevant case- law reiterates that an administrative inquiry, even in the context of armed conflict, is effective when it is capable of leading to a determination of whether the force used was or was not justified in the circumstances and to the identification and punishment of those responsible. This is not an obligation of result, but of means[50].

4.1.b. Squat raid in Koukaki in December 2019

In the previous annual report of EMIDIPA, reports were made regarding the administrative investigation of a number of complaints regarding actions of police officers that came to light in the context of police raids in squats. More specifically, on 18.12.2019 during the squat raid of buildings located on Matrozou, Arvali and Panaitoliou streets in Koukaki, Athens, three family members were reportedly injured inside their residence, some other individuals and a woman were shot at close range with rubber bullet.

The disciplinary investigation l that was ordered was not allocated according to the number of complaints, which led to three different criminal case files respectively, but was common for all these cases, that is the Ombudsman's case under No. F. 273254. Since the notification of the relevant preliminary investigation order, the Authority requested to be provided with copies of relevant audiovisual and audio material, which were invoked in the relevant correspondence, however, their sending to the Ombudsman is still pending despite the completion of the disciplinary control. The same request was submitted to the Athens Public Prosecutor's Office, as the relevant material was part of the aforementioned criminal case files, which also remains unanswered.

- Regarding the completeness and effectiveness of the carried out disciplinary investigation which concluded that no disciplinary liability arose, the Ombudsman noted that, the documentation with regard to the reported incidents on Matrozou Street, was based exclusively on the content of the relevant Public Prosecutor's order, indicating that criminal justice had the jurisdiction to rule. As noted, this choice failed to take into account the autonomy of the disciplinary investigation against the criminal one founded on art. 48 of PD 120/2008, the extensive scope of disciplinary offenses against criminal ones,

50. ECtHR judgment, *Al Skeini et al. v. United Kingdom*, 07.07.2011

as well as the different purpose served by these two proceedings[51]. In the light of these all-encompassing considerations, the Ombudsman additionally highlighted that the Public Prosecutor's order does not constitute either a judgment of a criminal court pursuant to No. 138 and 139 of C.P.C. or an indictment, while it was also reminded that the national case-law has defined that in cases where a provision of PD 120/2008 requires specific conditions, as in the case of No. 49, the judgment of the criminal court is not accepted either[52].

Undoubtedly, taking into consideration the Public Prosecutor's provisions is part of the collection and evaluation of required evidence of the disciplinary investigation. Nevertheless, these provisions are not binding for the investigator, especially as far as the real facts of the case are concerned. Even when a criminal court judgment has to be taken into consideration under the provisions of art. 48 para. 2 PD 120/2008, the object of disciplinary procedures is defined by the purpose of disciplinary offenses and penalties, the concept of discipline (which includes respect and protection of citizens' rights provided by the Constitution and laws), the scope of official duty (obligations imposed by the provisions of the Constitution, the laws, the relevant Rules of Procedure, the orders of the Service, as well as the behavior that must be observed inside and outside the service due to status), and the concept of disciplinary misconduct. In this context, as the second order by the Public Prosecutor's Office at the appeal court comments, the provisions of PC in combination with the relevant provisions of PD 120/2008 should supplement the rule of law as to the terms of disciplinary misconduct, provided that there is no purely disciplinary misconduct.

Based on the above and in combination with the content of the complaints, the Ombudsman considers that in cases where specific actions of police violence are reported, the argument about immobilization should include the specific actions developed for immobilization especially if these actions took

51. For the independence of the two procedures and especially for the provision of Article 48 para. 3 of PD 120/2008 See. Council of State plenary session 4662/2012.

52. see. R. 7 Administrative Court of Appeal of Athens 2613/2005. Even for an order of the Public Prosecutor's Office at the appeal court, by which it was decided to file a case according to Article 2 para. 2 L 4043/2012, the Council of State held (1513/2019) that: *"It is unjustifiably alleged a violation of Article 6 para. 2 of the ECHR, because the above Public Prosecutor's order did not establish non-existence of the facts that constitute the constitutive elements of the disciplinary misconduct attributed to the appellant and therefore, this provision did not bind the Court of Appeal".*

place in the context of a planned operation and, if- upon interaction with any reactions of the persons- they led to injuries, confirmed by a forensic report for which the medical examiner has given a sworn statement.

The ECtHR's case-law is also consistent with this point of view and recognizes in principle that any subsequent assessment of the necessity of exercising physical violence against a person who faces prosecution authorities, cannot replace the evaluation of the police officer who must act in the heat of the moment, in order to prevent a possible danger to his life. However, it clarifies that police operations involving the possibility of resorting to violent repression by definition involve the need for impulsive acting in order to response to unforeseen events and therefore their implementation method should be thoroughly considered in order to ensure that all necessary measures are taken to minimizing or even avoiding the use of force[53].

Particularly, in the case of a citizen, who was under the authorities' control- given a police operation inside his house- and was immobilized on the ground by an officer's boot, the Court was doubtful about the possibility of the citizen being able to cause any threat just because he simply raised his head, and therefore ruled that the relevant treatment degrades human dignity and constitutes a substantial violation of the right of Article 3 of the ECHR. In addition, in the same case, the Court found that there was a violation of the procedural part of the same Article, as the authorities completely ignored the relevant claim of the victim to be immobilized on the ground with a boot on his back, despite the fact that he had already been within brought under the control of specially trained police officers and there was a relevant imprint of the police officer's boot on his clothes. Furthermore, it was noted that the Prosecutor's Office and the courts did not conduct any examination on the police operation planning, in order to ascertain that all reasonable measures to minimize or avoid injuries to individuals inside their house were used, and therefore the legitimacy of the authorities' use of force was not thoroughly investigated[54].

In addition, regarding home searches, the Ombudsman considered it appropriate to highlight that, in accordance with the provisions of art. 9 of the Constitution, an individual's residence is seen as an asylum, and therefore no search may be carried out in a person' s home other than in the cases and in the forms provided for by law, and representatives of the judicial authorities

53. ECtHR judgment, *Vladimir Romanov v. Russia*, 24.07.2008.

54. ECtHR judgment, *MÎȚU v. Moldova*, 30.06.2020.

must always be present. Violation and non-compliance with legal requirements constitute a violation of the right to inviolability of one's premises and abuse of power. As theory further analyzes: *"This means that the constitutional legislature prohibits illegal, that is, arbitrary interventions of state power. Infringement of right to inviolability of one's premises by individuals is a separate issue: provided for and punished as domestic peace disturbance (art. 334 of the PC) or possibly as a breach of the public peace (art. 189 of the PC). The Constitution mainly deals with violation of right to inviolability of one's premises by the state[55]".*

In this context, art. 241 of the PC recommends the criminal penal rule of infringement of right to inviolability of one's premises as an individual legal interest, as enshrined in the above Article of the Constitution, as a negative situation that establishes a claim of abstention of State's authorities power from interference: *"Although initially inviolability of one's premises was intended to protect the private life of isolated individuals, today it is a particular form of personal freedom in general[56]..."*. At the same time, art. 96 of PD 141/1991, defining the limits of official duty, stipulates that police investigations in a residence are subject to the restrictions and provisions of the Code of Criminal Procedure if they are carried out in the context of preliminary investigation, while for those that do not fall within the framework of preliminary investigations, the resident's explicit consent is required. In cases where a prosecuted person's arrest must take place, art. 108 of the same PD provides that entry to a residence is made, without any formalities, provided that the resident has explicitly requested the entry, while an investigator is allowed to enter despite the resident's will only in the presence of a representative of the judicial authorities. If these persons are not present until their arrival, the police officers in charge of the arrest guard the residence to prevent the escape of the persecuted and notify their Service[57].

55. Manesis A., 1978, *Constitutional Rights - Individual Freedom*, Sakkoula Publications, Athens – Thessaloniki, p. 226.

56. Op. Cit. p. 225.

57. In relevant case-law, the Supreme Court (see council of the Supreme Court 1894/2010) concludes that: *"In particular, as to the assumptions that the Police officers who were present during home search pointed to the magistrate upon his arrival the place where the drugs were and even with the hesitant thoughts that they pointed to the place "either because they saw some packaging... or because that was the only storage space of the house", it turns out that it exists ambiguity as to what the Council accepted as to whether the home search had begun by the police before the magistrate arrived at the apartment, and the police officers*

The concept of "residence" corresponds to the area intended for one's living space and such is any fenced area, in the sense of the existence of natural boundaries, to which there is no free access of anyone and where a person resides permanently or temporarily[58]. Regarding spatial planning, it additionally includes the main areas of houses and apartments as well as ancillary areas (such as courtyards, gardens, garages, hallway, staircase, terrace, basement)[59]. *"The officer's entering into the yard of the house or just the ascending of the staircase constitutes a complete violation of inviolability of one's premises [...] since both the yard and the staircase as integral, fenced and inaccessible parts of the house are also covered by the right to inviolability of one's premises[60]".*

In addition to the resident's lack of consent, the following details of art. 241 of the PC must be met in order for the infringement of inviolability of one's premises to be established: a) the officer's entry is not provided by law and b) it takes place without the legal formalities. Conversely, the entry is legal, regardless the resident's will, when it is made either for investigative purposes, i.e. in the context of a legal investigation, or in the context of criminal repression, i.e. to arrest a person who is committing a crime or an offense: *"It is not enough for the law to provide entry to another's home in order not to constitute an infringement of inviolability of one's premises, but it should also be done with the legal form, i.e. according to the procedure provided by law. Thus, for instance, art. 9 of the Constitution requires the investigation- and therefore the necessary entry condition- to always take place in the presence of a judicial officer, unless the entry is made for a person's arrest due to that he/she commits a crime (the greater provided by art. 6 para.1 of the Constitution includes the lesser) or take place in the framework of exercising the right of defense or emergency[61]"*. In other words, the two above negative conditions set by art. 241 of the PC as evidence of the objective nature of the infringement of inviolability of one's premises should be cumulative. One condition alone is not enough to legitimize the violation.

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indicated the place to him after they had previously searched themselves, or this home search was carried out in the presence of the magistrate from the beginning".

58. Mpitzilekis N., 2001, *Service Crimes - Articles 235 - 263A PC*, Sakkoulas Publications, 2nd edition.
59. Dagtoglou P., 1991, *Constitutional Law - Individual Rights A* ', Publications Ant. N. Sakkoula
60. Mpitzilekis N., 2001, op. cit. p. 485.
61. Ibid, p. 480.

In the light of the above- mentioned, the Ombudsman commented that in a judgment against our Country, the ECtHR has underlined the need to apply the provisions of national legislation as a basis and prerequisite for conducting such investigations. At the same time, the Court has highlighted that: *"the Contracting States may consider it necessary to resort to such measures, such as searches of premises and seizures, in order to obtain physical evidence of certain offences. It will then be the Court's task to assess whether the reasons put forward to justify such measures were relevant and sufficient, and whether the proportionality principle has been adhered to. As regards the latter point, the Court must first ensure that the relevant legislation and practice afford individuals adequate and effective safeguards against abuse. Secondly, it must consider the specific circumstances of each case in order to determine whether, in the particular case, the interference in question was proportionate to the aim pursued. The criteria the Court has taken into consideration in determining this latter issue are, inter alia: the circumstances in which the* order was issued, *in particular whether any further evidence was available at that time; the content and scope of the order, having particular regard to the nature of the premises searched and the manner in which the search was conducted, including whether or not independent observers were present; and the extent of possible repercussions on the employment and reputation of the person affected by the search (...). In the context of searches and seizures, the Court also requires that domestic law provides adequate and sufficient guarantees against arbitrariness (...)The Court also reiterates that these guarantees include the existence of "effective scrutiny" of measures encroaching on Article 8 of the Convention.[62]"*

Furthermore, the ECtHR draws particular attention to cases where national law empowers the authorities to conduct an investigation without a prior judicial warrant. Where national law does not provide for a prior judicial review of the legality and necessity of residence search, there must be other guarantees of this kind, to counterweigh the imperfections associated with this matter and, where appropriate, the content of the search warrant. In any case, the absence of a prior judicial review can be remedied by carrying out a subsequent judicial review regarding the measure's legality and necessity.[63]

In relation to the allegation made in the context of this disciplinary investi-

62. ECtHR judgment, *MODESTOU v. Greece*, 16.03.2017.

63. ECtHR judgment, *BRAZZI v. Italy*, 27.09.2018.

gation for the safeguarding of confidentiality of wireless communications, according to art. 3 para. 2 of PD 47/2005, and with the need for relevant observance of the procedure, provided in Articles 4 and 5 of Law 2225/1994 on its waiving, the Ombudsman underlined that the confidential spectrum concerns the protection of the citizen's privacy and personality and is explicitly defined in art. 1 of the same PD. Namely: *"to remove the confidentiality of communications and to record in a single text the terms and procedure thereof, as well as the technical and organizational methods by which it can be carried out and to ensure its results, so as not to infringe on the citizen's privacy and the personality, except to the extent and for as long as it is absolutely necessary for the sake of the protection of national security, the correction of crimes provided for in Article 4 of Law 2225/1994 (121 121), as replaced by Article 12 of Law 3115/2003 (A' 47) and in general individual rights and freedoms, the procedures provided by the provisions herein shall apply"*. Therefore, to the extent that the legal purpose is limited to the citizen's privacy and personality, inter-service communication between police officers for the execution and during the performance of their duties does not fall within the specific legal framework of confidentiality.

In fact, the case-law of the Supreme Court accepts that the prohibition of the use of illegally obtained evidence does not include the acts or expression of the individuals, which, regardless of the place and time they were implemented, do not belong to the sphere of their personal and private life, but in the context of the official duties assigned to them during their performance, which by the nature and type of the duties performed are subject to public scrutiny and criticism[64]. Recently, it has been accepted that the use of illegal evidence is permissible in disciplinary procedures as well, under the same conditions as in criminal proceedings, provided that it is in accordance with the nature and purpose of the disciplinary procedure[65].

Therefore, internal communication, which takes place in the context of the execution of duties assigned to police officers is subject to public scrutiny and criticism due to their nature and type and does not fall within the PD 47/2005, as explicitly defined in Article 1 thereof.

- The second squat raid, which was the subject of this disciplinary investigation, concerns the evacuation of a building on Panaitoliou Street in Koukaki.

64. See SC 1202/2011.

65. Opinions of the Advocate of the SC 14/2020.

In this raid, in addition to the police statements, there was also an analysis of the relevant documents collected after the ordered PDE supplementation, which concerned the features of the weapon that launches plastic bullets and the provisions governing its use, while actions for locating and investigating those arrested- who were not found at their declared addresses however- are also analyzed.

Regarding the administrative investigation of this incident, the Ombudsman notes the absence of any reference to and evaluation of the findings both of the forensic report and the medical certificate of the public hospital, related to a citizen's complaint about the fact that he was injured with a plastic bullet. Similarly, there were no testimonies of the forensic expert or the attending physicians, while there was no evaluation of the contradictory testimonies of the police officers involved or present at the incident regarding the necessity of using a weapon.

According to the ECtHR's case-law, art. 3 of the ECHR does not prohibit the use of force for effecting an arrest, provided, however, that such force may be used only if indispensable and must not be excessive[66]. In the same context, the Court accepts that when a person is injured while within police control, any injury that occurred during this period produces, in principle, a strong presumption. This period covers police detention and arrest. In such cases, the burden of proof may be regarded resting on the authorities, and it is up to them to provide a plausible explanation of how those injuries were caused during the aforementioned period, including the arrest process, by producing evidence establishing facts which cast doubt on the account of events given by the victim, especially if these are based on medical reports[67].

The following Ombudsman's comment on the planned squat raid, which concludes that the non-lethal plastic bullet was used for intimidation purposes, concerns the evaluation of the legal conditions for its use, as well as the thorough control of the shots' direction. Given that the use of these weapons is governed by the provisions of L 3169/2003, it is recalled that the concept of an intimidating shooting, as defined in art. 1 para. 1 point (d) of the aforementioned law, refers from the outset to the non-targeting and non-damaging of any target. On the contrary, it is allowed if the parameters set by art. 3 para. 4 of the same law apply, and specifically in cases *"of danger from an animal or*

66. ECtHR jugement, *IVAN VASILEV v. Bulgaria,* 12.04.2007.

67. Ibid

warning for shooting at a human, provided that all necessary measures have been taken to prevent a human being from being affected due to misfire or ricochet".

In the context of the disciplinary investigation of the above case, the decision of the Chief of the Hellenic Police under No. 7001/2/157/1-v΄ / 31.05.2018 concerning the use of specific weapon by EKAM is invoked, without analyzing its content or communicating the relevant document to the Authority, due to confidentiality purposes. However, the Ombudsman observes that the report of the disciplinary procedure findings, as a document within the meaning of art. 2 of PD 75/1987, is also covered by official secrecy, according to the special provision of art. 54 para. 8 of PD 120/2008, and consequently access to it is made exclusively within the conditions set by law. Therefore, the refusal to notify the said decision to EMIDIPA or make a reference to its content - due to confidentiality – when at the same time the disciplinary investigation report, which is also confidential, is sent and assessed by EMIDIPA in terms of its completeness according to the law, seems rather a way to delay the whole procedure due to its introverted and ultimately self-referential character, given the legally provided interiority that goes through an administrative inquiry of the Service, according to the provisions of PD 120/2008.

Furthermore, the Ombudsman recalls that according to the Court, the absolute character of art. 3 of the Convention does not allow the counterbalance between the citizens' physical integrity and the maintenance of law and order. Regarding the use of firearms, police officers should not act in a regulatory gap while performing their duties, whether it is about an organized operation or in the context of spontaneous pursuit of a person who is considered dangerous. On the contrary, what is emphasized is the need for a specific legal and administrative framework, which sets out the limited circumstances under which law enforcement authorities may use force and firearms, in accordance with the relevant international standards in force[68]. In this light, the reference to the content of specific provisions during disciplinary control regarding the use of weapons should additionally confirm the existence and clarity of the legal framework, as well as its alignment with international standards, especially in cases where technical characteristics are not available for them, as in the present case.

- The Ombudsman does not identify gaps or errors in the disciplinary proce-

68. ECtHR judgment, *İZCİ v. Turkey*, 23.10.2013.

dure that concerns the third squat raid in the building on Arvali street. However, in the context of the uniform control that was ordered, both in terms of its execution and in terms of its completion and based on the above remarks, the Ombudsman referred the case for further supplementation.

4.1.c. Case investigation in a city of the prefecture of Magnesia in June 2020

Another case that was mainly featured on social media and has been a major concern for public opinion refers to an incident of police violence against a young man that took place at the start of the summer of 2020 in a city of the prefecture of Magnesia. According to the complaint, as well as the formed disciplinary case file, this incident of police abuse began outside the Court, where a crowd of citizens was gathered, protesting against the incidents and arrests that had taken place on the previous day, and then continued inside the official car in which the complainant had been transferred, as well as inside the Police Department where he was being detained until his release.

The case disciplinary investigation was ordered several days later, and specifically the day after the victim's death, along with the relevant notification to the National Mechanism, receiving the number **F. 282183**. Upon completion of the investigation in the first months of 2021, the Ombudsman received the entire disciplinary file. Having studied the file, the Ombudsman found that both the investigation itself and its documentation were significantly lacking in completeness and diligence, leaving a number of issues unanswered, thus the case was referred back in order to be supplemented. In the last months of 2021, the National Mechanism received a notification on behalf of the Hellenic Police in relation to its willingness to supplement the disciplinary investigation, responding to the Authority's recommendations. No update has been received since then.

As for the content of the recommendations, the Ombudsman first referred to the time and type of disciplinary control, commenting on both the unjustified delays and on the a priori strictly delimited field of investigation, associated with a specific disciplinary offense, predisposing the scope of the investigation and the context of penalties provided for. In the same context, the Ombudsman reminded that according to the ECtHR's case-law the promptness of the procedure is one of the basic elements that indicate the efficiency and independence of the disciplinary control. More specifically, a prompt response by the authorities in investigating allegations of ill-treatment may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any

appearance of collusion in or tolerance of unlawful acts.[69] In addition, he noted that despite the fact that the conduct of investigated police officers falls within the responsibility of the disciplinary investigator, when it is in full alignment with its limited orientation from the outset without the required *"beyond reasonable doubt[70]"* documentation, as set by the Court, its validity is undermined. This raises reasonable suspicions about its arrangement, while a strong presumption of violation of art. 3 of the ECHR is established, constituting a sufficient basis for adverse judicial judgment by the ECtHR for the accountable state, which *"is justified by the fact that the persons held in detention are in a vulnerable position and the authorities have a duty to protect them[71]"*.

The Ombudsman has also noted serious deficiencies regarding collection and assessment of evidence. In relation to the first, no efforts were made to find and question eyewitnesses or other witnesses, although the ECtHR's case-law has repeatedly considered the examination of eyewitnesses and key witnesses in general fundamental for the substantive course and effective outcome of disciplinary control[72]. On the contrary, the investigation was mainly based on the statements of those police officers involved, thus jeopardizing the independence and consequently the effectiveness of the procedure, through impunity in effect[73]. Similarly, the additional video footage from the close circuit television cameras of the police directorate where the alleged victim was brought was not obtained or presented, despite the allegations of continuing violent and degrading treatment by police officers. Regarding this point as well, the ECtHR has repeatedly ruled on the importance of preserving and presenting this evidence in cases of police violence allegations[74].

However, in addition to the shortcomings, the Ombudsman has also highlighted a number of irregularities in relation to the collection of evidence. Among them, the following are noted: unjustified receipt of the victim's entire medical file instead of only the reports issued on the occasion of the reported incident; inclusion of a medical report by two private doctors, without checking the legality of their involvement in the case, and even the legality of their access to the victim's medical

69. ECtHR judgment, *Bouyid v. Belgium*, 28.09.2015.

70. ECtHR judgment, *Ireland v. United Kingdom*, 18.01.1978.

71. See, for instance ECtHR judgment, *Salman v. Turkey*, 27.06.2000.

72. ECtHR judgment, *X. & Y. v. Russia*. 22.09.2020.

73. ECtHR judgment, *Emin Huseynov v. Azerbaijan*, 07.05.2015.

74. ECtHR judgment, *Lapshin v. Azerbaijan* 20.05.2021, *Magnitskiy v. Russia* 27.08.2019.

file; possibility of violating the confidentiality of the procedure. The same applies to the involvement of a specific legal representative of the investigated officers, in spite of the fact that in their statements they all refused the appointment of a defense counsel. On the contrary, the investigation failed to seek the reports or testimonies of the victim's attending physicians, as well as of the nursing staff and neglected to include the opinion of the technical advisor appointed by the victim's family. Some further omissions relate to the receipt of other relevant documents as well as to the seeking and matching of the victim's photographs that were allegedly taken on the day of the incident and they were published in the press.

The absence of evidence assessment and comparative analysis led the Ombudsman to further comment on the word-for-word similarity of the written statements submitted by the investigated officers, despite the Authority's repeatedly stated position that this practice undermines the reputation and credibility of the disciplinary procedure[75]. In addition, the Ombudsman has reported logical inconsistencies, contradictions, and obvious contrasts between allegations and images of the audiovisual material, as well as other elements of the file.

A special reference was also made to the required hierarchical distance set by the law[76], between those undergoing and conducting the control, as a guarantee for the impartiality and transparency of the process. Although that distance was formally ensured, it was practically deconstructed regarding the apologies of the investigated police officers and the sworn testimonies of the defense witnesses, which were carried out and collected by order of a colleague, who served in the same Directorate with them. The Ombudsman highlighted that apart from the required distance, the unity of the disciplinary procedure is also violated with such a practice.

Finally, the Ombudsman pointed out that the general references to the victim's conduct and his participation in various collective groups or his general criminal activity as a counterargument to police violence, since they are not being clarified and documented, tend to disorient the purpose of the disciplinary procedure and especially disciplinary proceedings. By putting the blame on the victim's conduct or action, the attention is diverted from the control of the prosecuted police officer's conduct and its reprehensible character is mitigated.

Concluding, the Ombudsman commented that the reported incident was neither momentary nor independent, but took place in three different places, at three

75. see The Greek Ombudsman- Special Report 2019- National Mechanism for the Investigation of Arbitrary Incidents.

76. Art. 1 para. 1 of PD 111/2019 and art. 26 para. 4 of PD 120/2008.

different times, and possibly with a differentiated composition of the persons involved each time. Insisting, at the same time, on the obligations set by the ECtHR's case-law on the existence of a strong presumption of violation of art. 3 of the ECHR in cases of complaints regarding serious ill-treatment of detainees or people within police control in general, especially when they are confirmed by medical or forensic reports, on the reversal of the burden of proof imposed by the victim's vulnerable position beyond any reasonable doubt, the Ombudsman focused on the absolute character of art. 3 of the ECHR, recalling that the absence of thorough and effective investigation constitutes at procedural level a violation thereof[77]: *"Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment, despite its fundamental importance would be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity[78]"*. Finally, in addition to these general principles, the National Mechanism considered it necessary to refer once again to those specific conducts, which have been explicitly integrated into the category of torture by the Court[79].

4.1.d. Investigation of incidents regarding protests during 2020

In the Ombudsman's findings and reports it is always highlighted that in investigations related to demonstrations/ protests there is an obligation to determine the disciplinary liability, while according to the ECtHR's case-law an administrative inquiry, even in the context of armed conflict, is effective when it is capable of leading to a determination of whether the force used was or was not justified in the circumstances and to the identification and punishment of those responsible. This is not an obligation of result, but of means[80]. Thus, in the light of procedural obligations arising from Article 3 of the ECHR, even when the events to be investigated take place in the context of generalized violence, measures must be taken to ensure the conduct of an independent and effective investigation. In this context, the finding of a relevant administrative inquiry should not be based solely on police officers' statements, and it should not fail to include eyewitnesses on behalf of the protesters. In addition, the crucial evidence should in any case include the recorded conversations between the dispatched police forces and the Radio-telecommunications center, while respectively any recording material

77. ECtHR judgment, *Andersen v. Greece*, 26.04.2018.

78. ECtHR judgment, *Assenov et al. v. Bulgaria*, 28.10.1998.

79. see Symeonidou - Kastanidou E., 2009, op.cit., Margaritis M., 2014, op.cit.

80. ECtHR judgment, *Al Skeini et al. v. United Kingdom*, 07.07.2011.

from security, traffic or other cameras would also contribute decisively to the formation of a clear image of the incidents.

For the incidents of alleged police violence during which 5 persons were immobilized in the streets around a square in the center of Athens, when a large number of people fled after launching stun grenade (F. 278405), the Ombudsman requested from the outset to receive immediate notification of the recorded discussions with the Radio –telecommunications center, the relevant material from security and traffic cameras, the statements of police officers and third parties involved and the medical/forensic reports of the two injured citizens.

Despite sending to the competent directorate a reminder document on behalf of EMIDIPA and two relevant documents of the Hellenic Police, the requested material was not forwarded in time. The fact that the recorded conversations with the Radio-telecommunications center were not forwarded, brought back into focus the detailed reference that EMIDIPA had already made in a previous report, regarding the mistaken reliance on the confidentiality of citizens' communications in relation to internal communications between the Radio-telecommunication center and the involved in the incidents police officers, for which there is an obligation to provide evidence to the National Mechanism according to art. 1 para. 7 L 3938/2011[81].

The Mechanism noted that the disciplinary investigation was mainly based on the statements of those police officers involved, the two injured citizens and an eyewitness. On the contrary, no other eyewitnesses were sought among neighbors and friends who accompanied one of the injured, despite the fact that there was a plethora of anonymous testimonies and that the arrest as well as the reported injuries took place in a densely populated area. At the same time, despite that there was audio and video footage available online, no action was taken to search for the said evidence. It was noted that "shifting back" of actions and corresponding obligations to the complainants is not in line with the procedures and the purpose of disciplinary control.

In addition, the Mechanism referred to the lack of credibility that is evidenced in the almost identical content of twelve (12) written police explanations, and in the lack of maintenance of equal distances regarding the testimonies of the injured citizens and the eyewitness against these police officers, resulting in the disciplinary control's unjustifiable adoption of the police version despite the emergence of sharply

81. see EMIDIPA Special Report 2019, p. 42-43.

different approaches. Additionally, there was an insufficient reasoning as to whether the force used was or was not justified in the circumstances, and the medical certificates of the two injured persons were inadequately evaluated. Especially with regard to the latter issue, the Ombudsman noted that the person conducting the PDE did not take into consideration the specific medical reports. On the contrary she questioned the type and severity of physical injuries those reports confirmed, making her own assessment that the compression fracture that was diagnosed regarding one of the citizens was not a severe injury. This kind of a comment led the Mechanism to remind of the need for a scientific documentation in the first place, clarifying at the same time that in any case of citizen injuries caused by persecuting authorities, the question is not only about the severity of injuries itself but the potential excess of used force, and therefore in any case the correct evaluation of medical findings constitutes an integral part of a thorough investigation.

Finally, the Independent Authority highlighted that the allegation on the citizens' failure to submit a complaint is unavailing, given the independent nature of disciplinary and criminal proceedings, and therefore it does not absolve the officer conducting the disciplinary control from the obligation to conduct a complete and thorough investigation in order to find the truth. Moreover, it does not limit or abolish the citizens' right of petition and therefore the obligation invoked by art. 10 of the Constitution in relation to the provision of a reasoned response by any public authority. According to art. 23 of PD 120/2008, citizens' complaints constitute an exercise of this constitutional right and the non-submission of a complaint to initiate criminal proceeding, i.e., the non-exercise of another right, cannot be used against them.

During an anti-fascist demonstration in November 2020 in Galatsi, a group of participating citizens were attacked by police officers whose duty was to control the demonstration and who made extensive use of police batons and chemicals outside a Café in their attempt to disperse it. Consequently, several protesters and other citizens got injured, while the relevant video footage was posted online. It is noted that for the same incident the Ombudsman received reports from citizens who reportedly were at that specific Café as customers and suffered physical injuries (F. 288646).

Responding to the relevant initial remarks of the Independent Authority, the EDE conductor took into consideration the recorded conversations with the Radio-telecommunications center, the medical/forensic reports provided by the complaining citizens, as well as the video footage from the cameras inside and outside the store (Café) where the above incidents took place, while he received the medical examiners' sworn statements about the cause and the severity of the injuries.

He then acknowledged the disciplinary liability of the operations head who did not give proper instructions and orders to the police officers of his squad. As a result, the police officers of the squad resorted to excessive and unnecessary or inappropriate and unsuitable to the circumstances violence, with punches, kicks, use of police batons and shields, as well as extensive and reckless use of tear gas canisters. Similarly, liability was also established for both tear gas operators due to their irrational use and the exercise of excessive and unnecessary violence. On the contrary, no liability was established for the other police officers who participated in these specific groups, since, according to the investigator, their identification was not possible due to that they did not wear badges on their helmets and uniforms.

The Mechanism accepted the EDE conclusion formulating two significant reservations: On the one hand, a significant malfunction is noted since the Service has found that its officers have committed serious disciplinary offenses and at the same time it is not capable of assigning the relevant liability on the said officers due to identification failure, which is expected to be promptly corrected through obligatory placement of badges on police officers' helmets and uniforms. On the other hand, EDE should have been supplemented in terms of the reasoning according to which the EDE conductor proposed the squad head's discharge of any liability, regarding his failure to make oral recommendations to the protesters so as to immediately and quietly disperse. More specifically, there should be an explanation why the customers' testimonies- from which he concluded to the fact that the protesters were notified about their arrest - were more important in shaping his judgment than those of the Café owners, who emphatically and clearly claimed that there were no warnings on behalf of police officers.

4.1.e. Cases of 17th November 2020

The 2020 celebration of the anniversary of the Athens Technical University uprising in Athens coincided with the imposition of strict restrictions on citizens' movement due to Covid-19. The complaints related to this day concerned on one hand incidents that took place in the center of Athens when citizens gathered and headed towards the American Embassy and were stopped by the Police who tried to disperse them using tear gas and cannons and eventually proceeded to arrest a large number of citizens who were detained in GADA detention centers. On the other hand, those complaints referred to corresponding demonstrations and police practices in the area of Kaisariani-Vyronas and in the area of Petralona (F. 289235).

Apart from all the other requirements of thorough investigations, EMIDIPA had previously highlighted for this case the need to investigate the necessary measure of use of force, means of binding and launching of chemicals, and the statements of objections of the arrested in relation to their arrest and detention conditions in GADA or other detention facilities.

Forwarding the conducted PDE, the Ombudsman commented the fact that the disciplinary investigation was monopolized by police statements and therefore it appeared insufficiently reasoned, referring once again to the ECtHR's case-law. In this context, the Ombudsman asked for the investigation's supplementation by the testimonies of those citizens arrested- including citizens whose testimonies, and even identities, emerged from the relevant online posts- and the submission of clarifications regarding their arrest and detention conditions. At the same time, the Ombudsman highlighted that a reference should be made on the capacity and surface of each floor's detention rooms, as well as the identification of all police officers involved, especially those who appear violent in the relevant photographic material and who were identified partially and, on a case-by-case basis. In addition, it was noted that there should be a justification regarding the arrest of such a large number of citizens, for whom either there were no specific suspicions of committing crimes, or their legal documents had been previously demonstrated or- for the majority of cases- they were leaving towards Omonoia square after the demonstration had been dispersed following the use of tear gas and cannons. The same practice was also applied to the other areas referred to these posts. The Mechanism has also asked to justify the absence of video footage from traffic or other cameras.

Following the above demonstration and after its dispersal, in another area in the center of Athens, having located a crowd of about one hundred people at a metro station, police officers were attacked with stones by the group and proceeded to a protester's persecution and arrest outside his house, during which both he and the police officers were injured. According to electronic posts, the father of the arrested suffered a heart attack and was taken to a public hospital for treatment under guard, while his mother and sister suffered violence, with the latter complaining that she had been punched on the head inside the Police Department (F. 288914).

Based on the general principle of independence and autonomy of the disciplinary over the criminal trial, which is based on the provisions of art. 48 of PD 120/2008, the Ombudsman considered that in this case, the conducted disciplinary investigation did not include a substantial and documented judgment on whether a purely disciplinary misconduct had been committed, given the full cor-

respondence adopted between crimes and disciplinary misconduct. Such an interpretation and practical application of disciplinary law ignores the coexistence of different rules of law, which govern the relationship between disciplinary and criminal law and consequently the different conditions required to fulfill its status as crime according to criminal law and as offense according to disciplinary law. That is why, according to the principle of the legal judge, the criminal judge is competent to decide whether a crime has been committed or not. Furthermore, the reasoning of identification ignores the purely disciplinary offenses provided by PD 120/2008, i.e., those that do not constitute crimes according to the PC or a special law, as it implicitly acknowledges that purely disciplinary offenses do not relate to reported police conduct against citizens but are limited to official offenses. The extension of this reasoning argues that if a a criminal case is not filed (for the crimes being prosecuted only after the victim's complaint it is quite common, due to non-submission or the existence of a specific deadline for the complaint's submission) disciplinary control and even the attribution of disciplinary liability is excluded from the outset, regardless of the type and the police officer's possibly offensive conduct against a citizen.

The context of such a practice inevitably brings to the fore an earlier finding of the UN Special Rapporteur, who in his report on torture and other cruel, inhuman, or degrading treatment or punishment, after his mission to Greece, had emphasized that the manner of EDE conducting (under the current disciplinary law) aims irrationally and primarily at protecting the rights of the investigated police officer[82]. Respectively, the ECtHR condemning our country, ruled that *"the penal and disciplinary system, as applied in this case, proved to be far from being adequately strict and has not been able to exert the appropriate deterrent effect to ensure the effective prevention of unlawful acts, such as those complained of by the applicants. In the particular circumstances of the case, the Court also concludes that the outcome of the proceedings against the police officer did not provide adequate remedies for the harm caused in violation of Article 3 of the Convention[83]"*.

The Mechanism invoking the relevant ECtHR's case-law as to the primary concern of securing evidence, emphasized the fact that the video footage could not be found due to the expiration of its retention period, does not correspond to the

82. *Report of the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment Manfred Nowak on his mission to Greece*, 21 April 2011, UN doc. A / HRC / 16/52 / Add.4, para 15, page 6: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/129/68/PDF/G1112968.pdf?OpenElement

83. ECtHR judgment, *Sidiropoulos and Papakostas v. Greece*, 25.01.2018.

effectiveness of the administrative investigation, especially when its conclusions are based on conflicting findings[84]. In order to avoid such an outcome, the Mechanism stressed the need to strengthen and expand the evidence, which in any case must lead to the identification of the police officers involved. On the contrary, with regard to the existing video footage, the Mechanism underlined the need for its comparative evaluation, in relation to the facts and further evidence. In particular, since the recorded images relate to the use of a police baton, the evaluation should be accompanied by the required reasoning as to the satisfaction of the legal conditions, while in any case, the Ombudsman highlights that the legality or illegality of the use of this means of repression is not identical with the effect of the beating.

In addition to the above, EMIDIPA considered it appropriate to recall that in national legislation, Article 2, point e of PD 254/2004 provides for the use of force, while the principles of necessity, appropriateness and proportionality must be observed during its exercise. Article 120 para. 2 of PD 141/91, provides that police officers at the time of arrest *"should treat detainees with approachability, not use force against them unnecessarily, and restrain them only when they react violently or there is a risk they might abscond"*. ECtHR does not either prohibit the use of force while making an arrest, such an option however can only be activated if necessary and provided that it does not resort to exaggeration[85], because in respect of a person who is deprived of his liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is, in principle, an infringement of the right set forth in Article 3 of the ECHR[86]. In connection with the aforesaid, the Ombudsman in relation to this case has also noted that it should be examined whether there exists a ground for the provisions of Article 119 point e of PD 141/1991 on the arrest of a person who, inter alia, *"...is in a crowd or in a group that is in cheer or under conditions or circumstances that may provoke the uprising of the crowd against the police officers who attempt to arrest and therefore the breaching public peace and the cancellation of the arrest, as long as there is no risk to abscond or disappear..."*.

Finally, the Mechanism reminded that the obligation to seek medical reports falls within the jurisdiction of the person conducting the administrative inquiry, in the context of his investigative duty, and that the authorities have an obligation to

84. ECtHR judgment *PÓSA v. Hungary*, 07.07.2020.

85. ECtHR judgment *IVAN VASILEV v. Bulgaria* 12.04.2007.

86. ECtHR judgment, *Y. v. Latvia* 21.10.2014.

protect the health of persons who are detained or under police surveillance or who have just been arrested and whose relationship with state authorities is therefore a relationship of dependence and power. This further implies the provision of immediate medical care when the person's state of health requires so, in order to avoid a fatal outcome.

4.1.f. Investigation of cases in March 2021 in the area of Nea Smyrni

The imposition of a lockdown throughout the country for a long period of time (07.11.2020 - 14.05.2021) and the delegation of the authority of control over compliance with the relevant measures and the imposition of administrative fines to the Hellenic Police, led to a high number of complaints about citizens' arbitrary police-checks, detention and arrests, excessive use of force, and unlawful fines and an ever-increasing protest against the use of the pandemic as a pretext to restrict constitutional rights and freedoms.

These phenomena had already started in 2020, on the occasion among other things of the incidents during the celebration of the anniversary of the Athens Technical University uprising in Athens, while they culminated with the events in the square of Nea Smyrni on March 7 and 9 2021. In the latter case, the imposition of administrative fines on citizens and families, due to their presence in the central square of the area on Saturday, 7th March, at noon, triggered the attending citizens'/ residents' reaction. The use of force, with extensive use of police baton by police officers against one citizen at least, which was recorded on video footage and was posted on the Internet, and the detention of citizens, who were in that specific or in the surrounding area, in GADA for several hours, provoked mass protests of the residents of Nea Smyrni against police violence during the evening of the same day, while wider groups of citizens proceeded to an even bigger mass protest two days later.

Intense incidents took place on 09.03.2021 in the evening that marked the initially peaceful protest rallies, causing additional allegations of police arbitrariness while citizens and police officers were injured. The most serious complaints concerned the exercise of excessive and gratuitous force, the throwing of Molotov cocktails, as well as the excessive use of chemicals by police forces, the transfer of groups of people to GADA, gratuitous arrests and detention of citizens in GADA for many hours and/or days, while the allegations of torture and generally degrading treatment of those arrested provoked an unfortunate impression. Given its special competence, the Ombudsman, as the National Mechanism for the Investigation of Arbitrary Incidents (EMIDIPA.), received these complaints both

from citizens and mainly in the context of monitoring the relevant internal disciplinary procedures, which in this case began immediately after the uploading of numerous posts and video footage.

For all these cases, continuing and strengthening its intervening role, EMIDIPA highlighted from the beginning, in its first letters to the Administration, the basic elements that the competent services of the Hellenic Police should include into the internal investigation, in order for it to be considered impartial, thorough, documented and effective, according to the case-law of the ECtHR and the Greek Courts. In this context, the followings obligations were identified: compliance with the necessary distancing between the disciplinary investigator and the bodies involved; identification of the police officers involved and specific reference to whether or not they wore badges; clarification of the orders or related actions of the operations head; collection and safeguarding of photographic/ video footage from traffic or other cameras and the Internet; utilization of the conversation between the dispatch communication center and active police officers; taking as many testimonies as possible, especially from eyewitnesses or residents who may have watched the incidents; seeking for relevant criminal records; collection and evaluation of relevant medical/ forensic reports; sworn statement of doctors/ medical examiners as to the severity and possible causes of the injuries in comparison to the complaints and testimonies; safeguarding of the independence of disciplinary and criminal proceedings and thorough disciplinary investigation of the incidents, regardless of the complaint made by the alleged victims; impartial performance of investigative duties, without any discrimination against citizens or other alleged victims due to political or other beliefs; and completion of internal investigations in a short time for the reliability of the disciplinary system. In addition, the disciplinary investigator was requested in advance to send the above information to the Mechanism upon receipt.

It is noted that the forwarding of specific data to EMIDIPA[87] constitutes a legal obligation, while any refusal or failure to provide them, apart from the corresponding violation that entails, prevents in essence the possibility of a simultaneous investigation by the Mechanism, since it is called upon to subsequently assess only the forwarded disciplinary investigation. In this context, the Hellenic Police response has not been consistent, since for some disciplinary cases the relevant video/photographic footage, the recorded conversations with the Radio-telecommunications center, as well as witness testimonies were immediately sent, while

87. Para. 3. art. 1 of L 3938/11, as in force.

for others the material was sent to the Mechanism upon completion of the disciplinary inquiry. On the contrary, the Ombudsman's response has been consistent, requesting the completion of the administrative investigation of all monitored cases, due to omissions in the investigation completeness and reasoning.

In the case of excessive use of force, with extensive use of a police baton against one citizen at least, for which there was a plethora of postings of video footage on the Internet, an EDE was ordered against the head of the squads involved- who got immediately suspended- and the other police officers involved (F. 295300). Despite acknowledging disciplinary liabilities for the lack of proper organization of the operation and the excessive use of force which led to the disciplinary investigation, the Ombudsman found that these liabilities were limited to the victimization of only one person, contrary to the broad content of the order of disciplinary investigation, and mainly in comparison with the number of complaints and related posts for further use of violence against other citizens, for mass transfers, arrests, as well as long detention of citizens in GADA.

The Ombudsman also referred to the fact of unreasonably decisive evaluation of police statements against these citizens, reminding that non-maintenance of equal distances towards witnesses does not ensure the required impartiality during administrative investigations.[88] The Ombudsman came to the same conclusion due to the discrepancy identified between the police statements and audio documents as well as video footage, while at the same time noted the lack of seeking for and summoning of eyewitnesses and other key witnesses. Similar omissions had to do with the fact that the medical report regarding an injured citizen was never sought. Finally, the Ombudsman stressed that the unjustified arrest of citizens due to their mere presence in a specific area, is contrary to both the Constitution and the European Convention on Human Rights (ECHR), and constitutes an violation of personal freedom, which is not restored with retrospective accusations or restrictions imposed by the pandemic. The exercise of unprovoked police violence at the same time, let alone excessive, further exacerbates the cycle of violations due to the presumption of abuse, which is established by the ECtHR's case-law.

88. ECtHR judgment D.Z v. Greece, 24.05.2007 and ECtHR judgment, P.G. v. Greece, 14.05.2010.

When investigating a reported (videotaped by an individual) throwing of improvised explosive device (Molotov) by the police towards the protesters (F. 295453), the National Mechanism highlighted that the only witnesses who were called to testify were the heads of the squads involved and the individual who videotaped the incident, while no effort was made to seek for other witnesses. In addition to the unjustifiably closed cycle of witnesses, errors were also identified regarding the testimonies of the police officers. These omissions included both the lack of the necessary questions to the above witnesses and the unequivocal acceptance, despite the multiple even logical contradictions, of their allegations.

The Ombudsman particularly emphasized the fact that no attempt was made to investigate the liability of the heads of the specific police operations. According to the relevant ECtHR's case-law the State agents have the obligation to protect the physical integrity of the protesters from illegal actions, even in cases where the perpetrator is an individual. Otherwise the State institutions are liable for violating art. 3 of the ECHR[89]. This means that police's liability, especially that of those being in head of the operations, should not be limited to the ascertainment of the Molotov cocktail having been thrown by a police officer - a member of their squad - but it should also extend to the failure of the police to take measures to prevent such actions. The same liability requires to examine if and what measures were taken to prevent or weaken the perpetrator during or after the throwing, regardless of his status as a police officer or a citizen, especially when the perpetrator appears to be in close proximity to the active police team, as in the case under investigation. In addition, it was underlined that the operation of the National Action Plan for Gatherings[90], which would provide images from portable or fixed cameras and aerial media, is still pending.

89. ECtHR judgment *SZ v. Bulgaria*, 03.03.2015.

90. National Plan for the Management of Public Outdoor Gatherings, Ministry of Citizen Protection, http://www.minocp.gov.gr/images/stories//2021/27012021-ethniko_sxedio2.pdf, p. 21: *"... images by portable and fixed cameras and aerial means (drones, helicopters, etc.) can be utilized for the design and implementation of operational interventions in the field, during pre-investigation work, in the formation of cases, in attempts to identify, locate and arrest perpetrators of violent incidents, during police interventions and for capturing the actual events that take place during gatherings... The collection and processing of material will be carried out in accordance with the legal framework set by PD 75/2020..."*.

Case F. 299498 is about a complaint filed by a young man who has been subjected to torture and inhuman and degrading treatment by police officers, both during his transfer and his detention for several days in GADA detention centers. More specifically, this citizen reported that on 10.03.2021 in the afternoon and while leaving the area between Daphni and Ilioupoli, a large motorbike blocked his way, while two men with their faces covered (full face) asked his name. Upon his answering, a large silver car without license plates arrived in which 2-3 men were riding; all of them wore full-face masks except for one for whom he gave a description. Then, they threw him on the hood of the car, they handcuffed him, made him wear a black hood and while beating him, they got him into the car. Throughout the journey, among other things, they were slapping him in the head so that he was bent down and not able to see the road. One of the men put his finger inside the complainant's ear causing him severe pain. According to his allegations, he did not understand in the first place that they were police officers fearing even that he was abducted. He did not receive any answer or explanation to his questions, and only when he heard the radio sound did he realize that he was arrested.

Then, he was led to GADA basement as he could distinguish wearing the hood, given that he had been there before. Moreover, they put him into the elevator by pushing him with his head, which remained covered, and as a result he got hurt, and while he was in the elevator, he was being beaten along the sides of his body by police escorts and being told derogatory comments as well as threats[91]. Then, they made him enter a room where there was only one table and 5-6 persons who- according to his allegations- kept beating and punching him repeatedly until he realized that he started losing his consciousness. He was still told degrading/ threatening comments[92], and he was still being beaten along the sides of his body, in combination with kicks with the toe of their shoes on his thighs and back and especially in the left side of his body. At the same time, they got the cuffs on so tight even when he told them that he is in pain, and as a result he felt his hands swollen and after a while he did not feel them at all. Moreover, the police officers present made an intimidating noise that sounded as if it were a zipper, asking him at the time "are you ready?" only to receive his negative answer. This question as well as the noise were repeated together

91. *"We will rape even your puppy f...", "look at that a... wearing rings", "he has strong legs for a 21-year boy".*

92. *"You think you are though dude...?", "yesterday you were tough ...now you're crying...", "We will f... you f...".*

with the following threat: "you don't want to know what happens if I ask you a third time". The complainant reports that he remained in that room for about 2-3 hours and the violence was escalating rather than diminishing.

He was then transferred to another room, where in the beginning he was put on his knees on the ground and then they kept beating him along the sides of his body. There, they started interrogating him regarding his presence in the incidents in Nea Smyrni. According to his allegations, police officers' violent treatment as well as threats continued throughout his stay in that room[93]. His detention lasted for three days, and was only interrupted twice in order to be transferred to the interrogator. Regarding the conditions of his detention, he reports that he was kept in the detention rooms on the 7th floor of GADA, together with a fellow inmate, friend of his, who had also been arrested as a suspect for injuring a police officer during the preceding incidents in Nea Smyrni. During his stay there, they were not given water or food, contrary to the other detainees of the floor, and as a result the detainees of the cell next to them, gave them any food that could spare. They could not use the toilet, so they had to urinate in empty bottles also provided by the detainees in the cells next to them, while they were forced to lie on the floor as the cell did not even have a mattress. Finally, according to his allegations when he was severely injured to a point that he had difficulty in walking, police officers kept yelling at him to do go faster, throwing the batons against the bars or the walls so that to terrorize him, while one police officer upon his return from the forensic marking procedure tripped and kicked him, although without using strength.

For this particular case, the Ombudsman reiterated with particular emphasis the conclusive character of any kind of police abuse, torture, and degrading or inhuman treatment, making reference to both national legislation[94], and the relevant ECTR provision. To this end, the Ombudsman made an extensive reference to the ECtHR's "tradition of case-law" as well as national courts legislation which is in

93. *"When you leave, we will give your pictures to DELTA and they will come outside your house to kill you"*, *"you are going to prison for an attempted police officer murder and you'll get the chance to write nice posts and count your likes"*, he was also proposed to jump out the window.

94. In particular, our national legislation provides a number of provisions on police officers' obligations, in which, inter alia, it is stipulated that: *"Police officers respect every individual's right to life and security of person. They do not bring about, cause, and tolerate acts of torture, inhuman or degrading treatment or punishment, and they duly report any violation of human rights"*, see art. 1 of PD 254/2004.

accordance with the former. Thus, among all the other interpretative elements, which have been set by the Court, as well as its special reference to conducts that constitute torture and which have already been mentioned above, with a specific decision the Authority adds that, the five special techniques, which appropriated by the British police as a tactic for the interrogation of Irish terrorism suspects, constitute humiliating and degrading treatment and insult human dignity, in violation of Article 3 of the ECHR. These include inter alia the use of hood and food, and sleep deprivation[95]. In order to strengthen this view, the ECtHR clarified at a later time that *"the ECHR constitutes a 'vibrant instrument', which must be interpreted in the spirit of today's circumstances"*. Given this assumption, it is highlighted that concrete actions or omissions that had been previously judged as degrading or humiliating to human dignity, could now be judged as torture, given the high standards that have prevailed in the field of human rights and fundamental freedoms, which inevitably require greater determination while identifying and punishing violations of these fundamental values[96].

To the same effect, the Greek courts have argued that the provisions prohibiting all forms of cruel and degrading treatment *"are intended not only to protect the general interest but also to protect the individual rights of citizens [and therefore] it is concluded that police authorities, which have the task of safeguarding social peace and tranquility as well as protecting citizens and their rights, must take the necessary and effective measures to ensure the fulfillment of their mission. While performing their duties, these bodies enjoy discretion to choose among many solutions the most appropriate one, in their judgment, but this choice is controlled in terms of exceeding the limits or abusing their discretion if their actions or omissions have harmed the life, physical integrity, personality and other individual rights of citizens[97]"*.

Thus, it has been considered, inter alia, that a citizen's injury caused by a police officer *"with the hands or legs and also with a police baton in the head and the body, while he/she has already been arrested and is handcuffed inside the police department constitutes an inhuman act in violation of Article 3 of the ECHR[98]"*, and

95. ECtHR judgment *Ireland v. United Kingdom*, 01.01.1978.

96. ECtHR judgment, *Selmouni v. France*, 28.07.1999.

97. Judgment 8125/2020 18th Three-Judge Administrative Court of First Instance of Athens recital 4.

98. Judgment 1784/2021 of the Single- judge Administrative Court of Appeal of Athens, ruling on the appeal lodged against the judgment 11077/2019 of the Single- judge Administrative Court of First Instance of Athens.

that *"the complainant suffered torture by the first accused person... who was on duty in detention centers and was in charge of the guarding and security of the detained- complainant, with the participation of other- unknown- police officers of the Police Department... on 31.12.2009, who were beating him for several hours repeatedly, systematically and intentionally, so as to cause him a sense of severe pain, having him seated handcuffed, immobilized, wearing a helmet on his head, with the aim of intimidating him*[99]*"*.

Based on the above and the particular offensive nature of the reported acts, the Ombudsman has initially commented on the two-month delay, which occurred between the time when these complaints came to the notice of the Police until the issuance of the relevant PDE, since the day after the victim's online interview on the events, the Deputy Prosecutor at Athens Court of Appeals had ordered to conduct a preliminary investigation to verify whether criminal acts had been committed or not, with special emphasis on the violation of Article 137A of the PC. Prior to the interview and after the Prosecutor's order, the Ombudsman had referred a relevant inquiry to the Hellenic Police, based on the relevant posts. Nevertheless, in the end the complainant had to send an extrajudicial document, in order for the procedure of disciplinary investigation to be initiated, a negligence which is not in line with severity of the reported acts that need immediate investigation, as highlighted by both the ECtHR and the General Prosecutor of the Supreme Court[100].

Despite the severity of complaints, which is further taken into consideration by the above-mentioned Public Prosecutor's order, the ordered disciplinary control seems not to share it at all, given the choice to be conducted at a preliminary level, instead of being equated with a disciplinary prosecution. This choice becomes even more incomprehensible, due to the victim's submission of medical certificates as well as the relevant forensic report, which are all contained in the

99. SC Judgment 1911/2019.

100. 6/2019 Circular notice of the SP General Prosecutor: *"... the notion of effective remedy (art. 13 of the ECHR) requires a documented - thorough and actual- effective investigation so that to be able to reach the identification and punishment of those liable, due to that only in this way is the procedural part of Article 3 of the ECHR not violated. In particular, the investigation of allegations of ill-treatment of detainees must be independent, rapid and thorough (indipendante, rapide, approfondie) and that shall mean: a) that the (institutional) independence of the investigator from those involved in the case will be ensured; b) that once an official complaint is lodged, immediate response of the competent investigator is mandatory, who will act in reasonable speed and due diligence and c) in case of a detainee's injury, a rapid medical examination will take place for its diagnosis"*.

medical file. The lack of their evaluation and utilization during the disciplinary investigation does not abolish their content and, consequently, does not provide a substantiated answer as to the origin of the victim's injuries, as required by the ECtHR's case-law. The failure to take into consideration the relevant doctors and medical examiners further increases the lack of a safe and documented answer. Similarly, the National Mechanism pointed out that no effort was made to investigate into key witnesses, such as detainees in the adjacent cells or those who came into contact with the victim during the days of his detention or those that followed. The victim's fellow inmate was not even called to testify. The young citizen, having been arrested for the same reason with the complainant, was at the time of the investigation, under temporary detention and in an online post reported that he had suffered torture during his stay in GADA at a corresponding time, without however the GADA's ordering a relevant PDE or the Public Prosecutor's preliminary inquiry for the investigation of these complaints. The argument about the victim's non-indication of witnesses is not in line with the investigative duty, according to the provision of art. 24 para. 3 of PD 120/2008 and it is incompatible with the rationale, since he was not called to testify in the context of the disciplinary investigation. On the contrary, disciplinary investigation is limited to the statements of only two police officers, who were not even asked the necessary clarifying questions.

Relevant omissions were also reported by the National Mechanism as to the receipt, preservation, and assessment of the video footage, despite the addressed notification in its first letter. On the contrary, the delay as to the order of disciplinary control contributed to a great extend to the result of deletion of the relevant material, especially when this is kept for only seven days. Apart from this, though, no action was taken in order to establish the validity of the allegation that inside the cell in which the victim was detained for three days there were cameras, while- given that the detention took place in GADA- one striking thing is the fact that the general counter- argument was that in the complainant's cell there was no recording system. Additionally, no explanation was given as to the full absence from the disciplinary file of the complainant's photographs taken during forensic marking, given that he was arrested.

In view of all the above, the Ombudsman reached to the conclusion that there was a lack of satisfactory and convincing, beyond reasonable doubt, explanation, through evidence establishing facts which cast doubt on the account of events given by the complainant[101], as should have been done in the context of reversal

101. See, inter alia ECtHR *judgment Bouyid v. Belgium* 28.09.2015.

of burden of proof applicable in cases where there are allegations of ill-treatment, coming from a person in custody or generally within the control of the Police or other prosecuting authority[102].

4.1.g. Investigation of the Perama case

Another incident of police arbitrariness that has been of a major concern for the public opinion during the last months of 2021 is connected to the persecution and the consequent death of a young Roma man in the area of Perama. More specifically, according to the complaints, at the end of October 2021 shortly after midnight, seven police officers, while persecuting a private vehicle in which two young Roma men were riding, started shooting towards the car resulting in the death of the front passenger. The number of fatal injuries of the victim, the total number of shell casings found at the area of the incidents as well as the violation of the explicit order, which had been previously given to the said police officers by the Radio-telecommunications center to end the persecution, caused the social outcry as to the police handling of the case and the criminal prosecution of the police officers involved.

The National Mechanism was immediately forwarded the order to carry out an EDE on behalf of the Hellenic Police, while at the same time the parents of the deceased filed a relevant complaint, forming the cases **F. 306749** and **F. 308906** respectively, and the Mechanism undertook their investigation and correlation. Following reports published in the press on the completion of the disciplinary investigation, the Ombudsman sent a relevant letter to the Hellenic Police, as a reminder for the immediate sending of the whole material of the investigating procedure after the drafting of the relevant disciplinary conclusion. The case remains under internal investigation.

4.2. Investigation of complaints and cases of unlawful pushbacks

By the end of 2021, twenty-one (21) complaints about unlawful pushbacks had been examined under the special competence of the National Mechanism for the Investigation of Arbitrary Incidents (EMIDIPA)[103]. It is important that in 2019 the

102. ECtHR judgment, *Aghdgomelashvili & Japaridze v. Georgia* 08.10.2020 and *Zherdev v. Ukraine* 27.04.2017.

103. Another fifteen (15) complaints are being investigated under the general competence of

Hellenic Police initiated[104] the preliminary disciplinary investigation of cases for which there had been reports published in the press, regarding alleged unlawful pushbacks through Evros. Until then, the Hellenic Police was in total denial of such incidents without conducting any investigation[105]. In 2021, the National Mechanism received reports on return incidents from the Aegean islands in which both the Hellenic Police and the Port Authority were involved. Both bodies initiated official administrative investigations (the Port Authority proceeded with an EDE, while the Hellenic Police with a PDE) when the National Mechanism forwarded them the complaints, as stipulated by law.

The incidents that have been reported to the National Mechanism are the tip of the iceberg, given that there is a number of Articles and online posts regarding systematic unlawful pushbacks of a great number of persons from land or maritime borders, a fact of concern for both the European Parliament, and the European Commission. The added value of these reports to the National Mechanism is the fact that the persons affected dare to support their signed complaints and that the National Mechanism conducts official investigation in order to verify the reported incidents.

From these **21** cases, two (**2**) reports are beyond the scope of EPIDIPA's jurisdiction, due to absence of authorization on the part of the person affected, which is required by law. The Ombudsman undertook two (**2**) cases upon referral by the FRONTEX complaints mechanism, pursuant to art. 111 para. 4 of Regulation (EU) 2019/1896. Pursuant to this EU Regulation on the European Border and Coast Guard, the FRONTEX fundamental rights officer notifies the Ombudsman- as the national mechanism for the protection of human rights- of the complaints regarding any violation in which bodies of the Greek authorities are involved[106]. On

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the Authority and are included in the group of cases that opened given the ex officio investigation procedure that started in June 2017. These complaints are about the alleged returns from the area of Evros and concern hundreds of returned migrants (see Interim April 2021 report https://www.synigoros.gr/en/category/default/post/alleged-push-backs-to-turkey-of-foreign-nationals-who-had-arrived-in-greece-seeking-international-protection).

104. For the EMIDIPA's referral back of a relevant 2019 PDE for supplementation, see the EMIDIPA report of 2019, p. 46 – 47 https://old.synigoros.gr/?i=human-rights.en.recentinterventions.699730.

105. See the Ombudsman's ex officio investigation procedure, ibid interim April 2021 report, https://www.synigoros.gr/en/category/default/post/alleged-pushbacks-to-turkey-of-foreign-nationals-who-had-arrived-in-greece-seeking-international-protection.

106. For the cooperation between the Ombudsman and the FRONTEX complaints mechanism

01.12.2021, the Ombudsman made available[107] to the public that a special investigation was initiated under EPIDIPA's special competence for the second complaint as well, regarding an illegal pushback from Evros which was duly referred by the FRONTEX complaints mechanism, and specifically by a FRONTEX interpreter. The Ombudsman forwarded this report to the Hellenic Police, having asked the immediate and thorough investigation of complaints for the period 03-04.09.2021. The Hellenic Police initiated a preliminary administrative inquiry, which is monitored by the Ombudsman, without prejudice to its own actions (**F.) 308485**).

From a total of nineteen (**19**) investigated cases within its competence:

- Thirteen (**13**) cases concern Evros (2 incidents allegedly took place in 2019, 6 incidents in 2020 and 4 incidents in 2021). In one of these cases, the complainant had already filed an asylum request, he was staying in the hospitality structure "Lagadakia" of Thessaloniki and reports that he got arrested in Thessaloniki and sent to Turkey through Evros. The Hellenic Police investigation is still pending (**F. 294363**). In another case, the complaint concerned the transfer of an asylum seeker from Igoumenitsa in order to be refouled through Evros (**F. 283807**).
- Six (**6**) cases are about pushbacks in the sea, which allegedly took place in 2020 and 2021 from the islands of Lesvos, Rhodes, Kos, Kalymnos, and Samos.

It should be noted that it is difficult to persuade victims of such treatment to file signed reports. From the reports investigated by the National Mechanism, there is one case undertaken by an NGO which will not proceed, due to the fact that the applicant is in fear of any retaliatory measures by the Administration (**F. 299926**). In another report, an eyewitness is afraid to provide evidence, although he has given his testimony to an international organization, which forwarded it to the Hellenic Police and LS - ELAKT anonymously (**F. 294506**). In both the above cases, the subjects are foreigners, now asylum seekers, who are in a vulnerable position to any discriminatory administrative treatment. It seems that the incidents they allegedly witnessed or suffered as direct affected persons, did not strengthen their confidence in the Administration.

for the cases that involve bodies of Greek authorities since the introduction of the European mechanism in 2016, see the details in the Ombudsman's special reports on return of third country nationals by year, from 2016 to date (www.synigoros.gr).

107. https://www.synigoros.gr/en/category/grafeio-typoy-and-epikoinwnias/post/greek-ombudsman-to-investigate-complaint-about-pushback-to-turkey-of-frontex-interpreter-after-receiving-complaint-from-frontex.

For all cases of alleged unlawful pushbacks, the Independent Authority (Ombudsman) has requested a thorough investigation of the incidents, forwarding the relevant reports to the Administration for investigation, which are under its monitoring, without prejudice to its own investigation, according to art. 1 para. 1 L 3938/2011, as in force. The Ombudsman has pointed out to the Administration that the relevant reports raise the following issues for investigation: a) issues of unlawful pushbacks, which constitute violation of personal freedom and non-compliance with the procedure of arrest and administrative treatment for any irregular migrant, and even more so for asylum seekers; b) issues of violation of international protection rules, given that any unlawful pushback of an asylum seeker constitutes not only a violation of personal freedom but also put the protection of life and protection against torture in jeopardy, in violation of the principle of non - refoulement; c) issues of ill-treatment by police authorities that may constitute torture, violations of physical integrity or degrading treatment, possibly with a racist motive. In cases where someone is stranded at sea, there is also a risk to life.

In the relevant administrative inquiries that have been transmitted to the National Mechanism in 2021, in order to examine their completeness, both by LS- - ELAKT and the Hellenic Police, there appear to be some common problems. We specifically note the following:

- Examination of the alleged victims of unlawful pushbacks is often omitted, while they should be sought through their legal representatives[108]. This reduces the effectiveness and reliability of the internal investigations of the Administration (**F. 297117, F. 291051, F. 294506**).
- Cross-checking the coordinates in the photographs provided by reported persons in order to prove their entry into Greece is also omitted (**F. 291051, F. 294506**).
- Non-registration by the Greek authorities is used as evidence, a fact which constitutes an obtaining of the sought, since if the legal administrative procedures had been followed, there would have been no room for unlawful pushbacks (**F. 297117, F. 283807, F. 291051, F. 294506**).
- In some cases, those conducting the internal investigations of the Administration make evaluative judgments that raise issues of non-observance of equal

108. It should be noted that examination can also be conducted by the consular authorities abroad pursuant to proportional application of art. 216 para. 2 of the CCP, as the Ombudsman has pointed out in a previous report, see 2020 EMIDIPA report, p. 59.

distancing (e.g. general judgments about the reliability of foreigners' complaints, **F. 297117**), or ethical judgments (e.g. for the observance of the Constitution and the laws by the Administration) that cannot be used as judgments about the facts and for proving violation of law and violations of right, because again they fall into the logical error of obtaining the sought (**F. 283807**).

Investigations on unlawful pushbacks are still pending, even in the cases that the National Mechanism has requested from the Hellenic Police or LS- ELTAK supplementation of the investigation, highlighting specific deficiencies and omissions. The Ombudsman will insist on the need for a thorough investigation of all relevant reports that raise issues of serious violations of fundamental rights.

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

The recent amendments brought by the new provision of art. 188 L 4662/2020, sought, inter alia, to give to EMIDIPA- as an external mechanism of investigation and control of the security bodies internal investigations- an additional basis in its communication with the Administration. The ability to inform the competent Minister at any stage of the disciplinary procedure, if a deviation with insufficient reasoning from its conclusion is found, for any actions on the part of the Minister as a disciplinary head of the uniformed personnel, additionally strengthens the institutional safeguard of the Administration compliance with the operative part of the findings of the Independent Authority[109], but mainly enhances the transparency of procedures and the accountability of institutions. This new possibility does not mean that the Ombudsman is coming to replace the disciplinary bodies, in excess of the principle of the legal judge, but quite the opposite, i.e., to defend the legal "guaranteeism" and therefore to defend the rule of law.

A. During 2021, the Ombudsman referred two (2) cases to the Minister of Citizen Protection, considering that the Hellenic Police deviations from its conclusions was unjustified. Namely:

4.3.a. Hate speech

The reason for the disciplinary and criminal investigation of case F. 230990 was a detailed Article published on line in 2017. According to its content, a

109. See art. 188, para. 4 L 4662/2020.

closed group of police officers, using a well-known social media network, uploaded systematically a series of racist and violent posts from the profile - page under the username "War dogs The comeback" and the indicated e-mail address fyssas@maxairomenos.com, which was also linked to the profiles-pages "War dogs Reloaded" and "War Dogs Cannot Die", which acted as successive predecessors of the profile in question each time it was deactivated, due to violation of the conditions of its use as to hate speech.

In its referral finding, the Ombudsman had already pointed out the fact that two parallel preliminary investigations were carried out at a criminal level for the same incident and their non-correlation, in addition to the breach of the unity of the procedure, according to the provisions of art. 128 and 129 of the CCP, affected the disciplinary procedure accordingly. The result of such an influence, combined with the lack of autonomy between the two procedures, which the Ombudsman had also commented on, eventually led to a selective disciplinary investigation, deprived of its functional role.

More specifically, the practical outcome of the fact that two separate case files were formed for the same case, led to the paradox that a criminal prosecution took place against the investigated police officer, as guilty of violation of L 4285/2014 while, at the same time, for the exact same reason, a preliminary procedure was pending against him as a suspect. As a further consequence, the non-joinder of the two related cases led the criminal court to rule, having unilateral knowledge of the evidence gathered only in one of the two preliminary procedures.

The same unilateralism prevailed in the disciplinary procedure, which, although enriched with additional testimonies in its second supplementation following the Ombudsman's recommendations, insisting unjustifiably on the association of the two proceedings despite the opposed statements of the Authority, was completed based entirely on the above judgment of the criminal court. This practice has once again led the Authority to highlight that in this case the disciplinary procedure appears to be abandoning its purpose, which is about an independent investigation for the observation of any disciplinary misconduct. By referring to criminal proceedings, the discipline investigator operates ostensibly, derogating not only from the relevant provisions of art. 48 of PD 120/2008, but in this case also by the order of disciplinary prosecution itself, which extended to pure disciplinary violations. Nevertheless, the Authority noted that the disciplinary control remains unreasonably limited and selective, as it does not seek or take into account, as it should, the details of the second criminal case, which emerged from the other preliminary inquiry, although it was aware of its conduct. The same selectivity appears as to the critical content of the additional testimonies that were,

received in the context of supplementation of the internal procedure following the Ombudsman's recommendations. Those testimonies were not taken into account with the argument of their late submission. The blame, however, for any delay, which is limiting the effectiveness of disciplinary control, according to the criteria set by the ECtHR[110], cannot be put on the witnesses and it is not a reason for excluding the relevant testimonies.

In the light of the above, the Authority considered it appropriate to refer to ECtHR's firm position, according to which when evidence of racist comments on behalf of police agents comes into light,: *"All the principal facts must be thoroughly investigated in order to establish the possible existence of racist motives[111]"*. Adopting this position, the Hellenic Police issued The Circular- Order under protocol number 7100/4/3/24.05.2006, which specifies that officers in the context of disciplinary investigation of cases involving unethical conduct by police officers against persons belonging to vulnerable ethnic, religious or social groups or who are foreigners must take all reasonable steps to verify and expose the existence of racist motives, either as an independent motive or as an individual one in case of multiple motives: *"In this case, the findings of the administrative inquiries and investigations should mention whether any racist motive in the conduct of the controlled police officers was investigated"*. Additionally, the order of the disciplinary control is along similar lines, and in addition to its delimitation through the definition of specific provisions, especially notes that: *"In any case, in the EDE conclusion, there should be justified assessments and conclusions, based on the investigative material, on whether there was a racist motive in the conduct of the police officer"*.

Following these, the headquarters of the Hellenic Police ordered to investigate any new information on the case, which has not been investigated or insufficiently investigated, underlining the obligation of specific and detailed reasoning, in case of deviation from the Authority's remarks. By midsummer 2021, the Authority was informed that the evaluation of its letter to the Minister, as well as its previous findings attached thereto, did not provide any new data, which have not been investigated in the context of the initially conducted EDE, without any other justification, without supplementary investigation and without answers to the questions raised.

110. ECtHR judgment, *RIP and DLP v. Romania*, 10.05.2012.

111. ECtHR judgment, *Mpekos– Koutropoulos v. Greece*, 13.12.2005.

4.3.b. Physical Injury

Case F. 244541 refers to an incident that took place among citizens, in which police officers got involved, as they rushed to resolve the problem and ended up arresting one of the citizens, thus making the latter to file a complaint of police abuse. In this case as well, two criminal file cases were formed; the one against the woman arrested through the flagrante delicto procedure and the other against the police officers involved, following a complaint that she filed against them.

As to the disciplinary investigation of the case, the Ombudsman had highlighted the following in its conclusion: a) the unjustified nature of the EDE being conducted under art. 27 of PD 120/2008, which does not constitute a disciplinary prosecution, although complaints were pending, and in fact against police officers for grievous physical injury, long before the issuance of the relevant order; b) the need, in this context, to convert the EDE in order for disciplinary prosecution to take place and c) the lack of documentation of the above statement of findings on a number of issues related to the conditions of the complainant's arrest and detention, the process of the ex-officio preliminary investigation that had been conducted, the circumstances under which the complainant had been injured, the comparative evaluation of all testimonies, and finally the justification of all medical reports. In response, the Authority received two additional disciplinary investigation reports, which, although they responded to the Authority's recommendation for the EDE conversion, did not make significant contributions to the deficiencies it had identified.

Although the multiple medical reports were finally added to the evidence of the disciplinary procedure upon its supplementation, no explanation was provided as to the reasons that were not duly sought by the Hellenic Police, except on the relevant recommendation of the Authority, by way of derogation of the obligation stipulated in art. 148 para. 1 of PD 141/1991, which provides for the delivery of medical reports concerning a transferee to the competent police service. Also, despite their fixation in the disciplinary case file, they were not assessed or commented on, thus their findings which additionally confirmed relevant testimonies were ignored. The above did not comply with the relevant obligations of the authorities, especially in such circumstances. Failure to comply with this obligation establishes a strong presumption of police ill- treatment, according to ECtHR's case-law. In particular, the Court highlights that: *"Where an individual is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation as to the causing of*

the injury, failing which a clear issue arises under Article 3 of the Convention[112]*"*. For this reason, the ECtHR also clarifies that in such cases *"the burden of proof lies with the authorities, which are obligated to provide satisfactory and convincing explanations"*[113]. In the same direction, the Court adds that: *"The authorities must always try to understand what happened or the base of their decisions before closing the investigation*[114]*"*.

The same practice was observed in relation to corresponding obligations that arose in this case in the context of the pre-trial stage of criminal proceedings, under the two aforementioned criminal case files that were formed on the occasion of the relevant incident. Failure to refer to them, in the context of disciplinary control, due to the independence of the two procedures, would constitute an additional omission, as the evidence collected under the two criminal case files mentioned above was used as such in the disciplinary proceedings, determining the content accordingly and influencing its outcome.

Although the above deficiencies relate to the pre-trial stage of criminal proceedings, they need to be emphasized, not only in relation to the questions raised in the exercise of official duties and the extent to which they have affected the judicial judgment, but mainly because this judgment is also raised in the context of the disciplinary procedure, both in relation to principal facts and as an argument a to the lack of disciplinary liability. The deficit in the independence of the disciplinary control that is found, is confronted here with the very order of its execution, which also refers to the detection of purely disciplinary misconduct, favoring both the theoretical[115] and the jurisprudential[116] assessments, that its scope exceeds the criminal one from the outset.

Furthermore, no explanation is given about the fact that the photographs of the complainant that had been taken in the context of her forensic marking were neither included in the disciplinary file nor forwarded to the Ombudsman, despite his relevant recommendations. According to the provisions of art. 27 para. 1 subparagraph a of' PD 342/1977, every legally arrested person is subject to forensic marking, which, among other things, includes his/her photograph, the specifications of which are previously analyzed in the rules of art. 26 of the same

112. ECtHR judgement, *Aksoy v. Turkey*, 18.12.1996.

113. ECtHR judgment, *LM and EK v. Greece*, 13.12.2005.

114. ECtHR judgement, *M.G.A.A v. Greece*, 18.01.2007.

115. Papadamakis A., 2016, op.cit.

116. See Council of State plenary session 4662/12.

PD. Similarly, the Authority was also been given an incomplete answer as to her request for the grant of video footage.

Additionally, the allegation of a four-hour restraint with the alleged victim's hands tied behind her back on the stair's bars of the police service where she was transferred at the time of her arrest, remains unanswered, although this allegation is confirmed by eyewitnesses and is consistent with the content of the aforementioned medical reports. In this regard, the Authority also considered it appropriate to refer to the ECtHR's case-law, which has ruled that the continuous or even long-term use of handcuffs on detainees raises the issue of violation of art. 3 of the ECHR on degrading treatment[117]. It is nevertheless reminded that the Order-Circular under protocol number 7100/22/4α/17.06.2005 of the chief of the Hellenic Police is within the same spirit, according to which: *"It is reminded that police action (and administrative action in general) is subject to the principles of necessity and proportionality. Especially, restraint must apply only if it is absolutely necessary and the possibility of escape cannot be faced with a less intrusive way (e.g., increased supervision) A simple "negative" conduct of the controlled, which is explained by the elementary instinct of self-preservation, does not unconditionally constitute a reason of restraint. Under his/her capacity and dominant position, the police officer has the legal obligation of impeccable conduct"*.

Finally, the Ombudsman reiterates once again that the lack of comparative evaluation of the testimonies taken into consideration during disciplinary investigation, ignores the discrepancies found as far as the real facts are concerned, both between the testimonies given at different times by the same persons and those between different witnesses.

In this context, on 27.10.2021 the supplementation of the ordered disciplinary control was requested again, in accordance with the findings and observations of the Mechanism, without another development in the meantime.

B. Regarding the cases that were referred to the Minister of Citizen Protection during the previous year and were included in the relevant Special Report of 2020, it is noted that all of them were referred by the Minister to the competent services of the Hellenic Police, in order to reconsider the Ombudsman's positions, without further developments. Namely:

1. With respect to the exercise of violence against detainees at a Penitentiary Facility during the raid by a special unit of the Hellenic Police in 2018, which

117. ECtHR judgments *Shlykof, et al. v. Russia* 19.01.2021, *Zherdev v. Ukraine*, 27.04.2017.

was reported by the Council of Europe (**F. 249152**), the supplementation of the disciplinary control as to significant shortcomings identified by the Ombudsman, still presented erroneous reasoning or even no reasoning at all in some points. The Ombudsman, in the letter to the Minister that followed, in addition to the serious gaps in the reasoning in relation to the beatings suffered by the detainees, reiterated that the disciplinary trial is autonomous and independent from the criminal one and that brutal behaviour, as a disciplinary offence, is unrelated to the typology of Penal Code offences, referring in that connection to the established case-law of the ECtHR. At the end of 2020, the headquarters of the Hellenic Police sent the Ombudsman's letter to the competent Directorate in order to supplement the administrative inquiry, reminding the obligation of specific and detailed reasoning, in case of deviation from the Authority's conclusion. With another letter, the Ombudsman in the beginning of 2021 requested relevant information, observing the provisions and the time limit set in Article 24 para. 6 of PD 120/2008; nevertheless, since then the Authority has not received any information on the case.

2. Concerning the reported use of violence against a minor, who was transferred to the police station on suspicion of theft in Thrace (**F. 243154**), the Ombudsman in its letter to the Minister noted that, despite the double supplementation of the disciplinary control, which was ordered following the Authority's two findings, the disciplinary investigation failed to provide the necessary explanations required to reverse the burden of proof for a person's injury while being in police custody. As highlighted in another point, the ECtHR's case-law stresses the obligation of the state authorities to provide a satisfactory and convincing explanation for the causes of injury to this person, by producing evidence establishing facts which cast doubt on the account of events given by the victim, regardless of the acquittal of the police officer by the criminal court[118]. In addition, The Ombudsman notes the wider scope of the disciplinary proceedings in relation to the criminal trial and the implausible (and unproven) claim that the minor's injury occurred in the short period after getting out of the security vehicle and until his transfer to hospital. Due to that the case had been filed at the beginning of 2021 by the Headquarters of the Hellenic Police, despite the suspension provided in art. 188 para. 4 L 4662/2020, the evaluation of the content of the Ombudsman's letter to the Minister was requested, in combination with the investigation of the points of the disciplinary case file which either were not addressed sufficiently or were not addressed at all, emphasizing once again the

118. ECtHR judgment *Karagiannopoulos v. Greece*, 21.06.2007, et al.

obligation of specific and detailed reasoning. The Authority has not received any update since then.

3. In relation to a detainee's complaint to the Ombudsman regarding torture and severe violation of his human dignity while collection of his DNA (**F. 237463**) by the police took place, the National Mechanism initiated an independent investigation and requested the disciplinary investigation into the incident. Due to the unreasonably selective, but also incorrect provision on behalf of the Hellenic Police of the information requested by the Ombudsman, the case could not be further investigated and was therefore filed.

Regarding the internal procedure, the Authority, commenting on a series of serious deficiencies and errors, suggested a corresponding supplementation of the investigation, and also a possible changing of status, turning the ordered PDE into an EDE, for reasons of impartiality and due to the severity of the complaints. Instead of the due supplementation and harmonization of the administrative procedure in accordance with the content of the Ombudsman's conclusion or the specific and detailed reasoning of its deviation from that - as explicitly defined by the provisions of art. 188 para. 4 of L 4662/2020, as well and art. 9 subparagraph c, and 12 of the EMIDIPA Rules of Operation – the Ombudsman received the decision by which the case was filed. In that way not only was there an absolute bypassing of the institutional role of the National Mechanism for the Investigation of Arbitrary Incidents, but also a derogation from the obligation set by the above-mentioned legal framework on the suspension of the disciplinary decision until the Authority's final conclusion. That obligation exists both in cases, where the National Mechanism is monitoring an administrative inquiry, or is conducting its own investigation.

In his letter to the Minister, the Ombudsman reiterated the serious deficiencies of the disciplinary control, and the equally serious evidence of the complaint under disciplinary investigation, referred to the actual refusal of the police to give access to the Authority in order to acquire essential information for its own investigation, while pointed out once again the independence between criminal and disciplinary investigation. In the beginning of 2021, the headquarters of the Hellenic Police initially requested the assessment of the Ombudsman's opinion validity, emphasizing the need for a specific and detailed reasoning and then proceeded with the revocation of the filing and an order to supplement the PDE due to a divergence of opinion between EMIDIPA and the Hellenic Police. The Ombudsman has not been informed of further developments regarding the internal investigation of the case.

4. The disciplinary control for the case **F. 254783**, investigated the use of a

weapon and the injury of a supermarket robber. Its supplementation, which was ordered following the Ombudsman's remarks did not take into consideration several issues mainly related to deficiencies in the evidence. The Ombudsman in its letter to the Minister noted the relevant lack of reasoning, which was caused by the absence of consideration and evaluation of the indicated evidence. Similarly, the Authority referred to the insufficient reasoning as to the classification of the shots as "immobilization" shots and as to the use of milder means, i.e., the observance of the principles of necessity and proportionality, which are imposed by L 3169/2003 for the use of a firearm by police officers and the relevant ECtHR case- law. As a result of the above letter, on 14.05.2021 a new supplementation of the disciplinary control was ordered, which is still in progress.

A common point of all the above cases, is that they were forwarded again to the competent directorates of the Hellenic Police for further consideration. Nevertheless, another common point is the fact that there are delays in the actions for this further assessment and the disciplinary investigations are still pending. These delays undermine the effectiveness of the investigations, as recorded by the case- law of ECtHR[119]and extend the precarious situation of the investigated police officers. All disciplinary bodies of the political and legal hierarchy of the security forces that are subject to the control of EMIDIPA are asked to confirm their willingness to carry out investigations with diligence and impartiality. The Ombudsman will insist on the use of the cases referral instrument to the competent Minister, in cases of unreasoned failure to comply with the Ombudsman's relevant findings, constituting "a substantial safeguard for the Administration's internal investigations", as the relevant regulation was characterized by the accompanying explanatory memorandum.

119. ECtHR judgment, *Aleksey Borisov v. Russia*, 16.07.2015.

5

COMMONLY IDENTIFIED SHORTCOMINGS OF THE DISCIPLINARY INVESTIGATION PROCEDURES

5. Commonly identified shortcomings of the disciplinary investigation procedures

5.1. As to the collection and assessment of evidence

5.1.a. Witnesses and witness testimonies

A critical issue which is raised in all the EMIDIPA special reports that have preceded thus far, and yet is still often raised in the Ombudsman's findings, is the failure to search for and locate eyewitnesses, even in cases where their presence is explicitly mentioned. A direct consequence that has been recorded is the restriction and, hence, the unilateralism of the disciplinary investigation in the testimonies or written explanations of police officers, whether they are being investigated or not (**F. 270993, F. 269135, F. 267196, F. 269382, F. 275404, F. 270704, F. 247668, F. 271379, F. 271378, F. 282183, F. 258681, F. 269138, F. 246381, F. 287243, F. 278405, F.287243, F. 289235, F. 293294**). The second direct consequence is the weakening of the pivotal role of eyewitnesses as the main means of evidence in the search for the substantial truth, as they *"shall mean those persons who are called to serve the purpose of providing evidence by testifying facts and events relating to a case being tried or under investigation and with which they are in a certain historical relationship*[120]*"*.

An extension of this result is the degradation that occurs in the disciplinary investigation, since, as indicated by the settled case- law of the ECtHR, the investigation conducted by the police concerns the conduct of a police officer and is essentially restricted to statements made by police officers, cannot be independent and, therefore, effective[121]. More specifically, the court highlights that *"the authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, inter alia, eyewitness testimony and forensic evidence. A requirement of promptness and reasonable expedition is implicit in this context. Any deficiency in the investigation which undermines its capability of establishing the circumstances of the case or the person responsible is liable to fall foul of the required standard of effectiveness.*[122]*"*

120. Triantafyllou A., 2014, *Issues of Testimonial Evidence in Criminal Proceedings*, P.N. Sakkoulas, p. 1.

121. ECtHR judgment, *Emin Huseynov v. Azerbaijan*, 07.05.2015.

122. ECtHR judgment, *Makaratzis v. Greece*, 20.12.2004.

The criticality of such an omission is further accentuated, as the Ombudsman often discovers that it concerns complaints regarding cases of serious ill-treatment of a person, while they are detained or generally under the control of the police (**F. 270993, F. 269135, F. 267196, F. 270704, F. 247668, F. 271379, F. 271378, F. 282183, F. 293292, F. 299498, F. 246381, F. 295300**). The absolute prohibition stipulated by Art. 3 of ECHR against such behaviour, constituting the epitome of the Convention, is reflected by the requirement of the ECtHR that the administration *"shall provide a satisfactory and convincing explanation by producing evidence establishing facts which cast doubt on the account of events given by the victim"*. Regarding the content of the logical and convincing explanations, the ECtHR generally applies the rule of proof *"beyond any reasonable doubt*[123]*", while in cases where the proof may derive from a combination of strong, clear and consistent conclusions, these must be drawn on the basis of irrefutable and strong evidence. In addition, in these cases, the authorities bear the burden of proof.*[124] *It should be noted that these requirements apply even in the most difficult circumstances, such as the fight against terrorism and organised crime*[125]*. Conversely, the ECtHR warns that the omission of such explanations may constitute a sufficient basis for adverse judicial judgment for the accountable state, which "is justified by the fact that the persons held in detention are in a vulnerable position and the authorities have a duty to protect them*[126]*"*. It is also added that these explanations constitute in essence an application of Article 1 of the ECHR and reflect the obligation for effective formal investigation: *"This investigation should lead to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment, despite its fundamental importance, would be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity*[127]*"*. It is also emphasized that: *"the authorities should always try to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis to their decisions*[128]*"*.

To this end, the National Mechanism insists on the identification of other key

123. ECtHR judgment, *Ireland v. United Kingdom*, 18.01.1978.

124. ECtHR judgments, *Salman v. Turkey*, 27.06.2000, *Popa v. Moldova*, 21.09.2010.

125. ECtHR judgment, *Ramirez Sanchez v. France*, 04.07.2006.

126. See, for instance ECtHR judgment, *Salman v. Turkey*, 27.06.2000.

127. ECtHR judgment, *Assenov et al. v. Bulgaria*, 28.10.1998.

128. ECtHR judgment, *Mikheyev v. Russia*, 26.01.2006.

third-party witnesses, such as forensic medical experts, attending physicians, nursing staff, fellow detainees, relatives, and ear-and eyewitnesses who, similarly, are not sought in numerous cases (**F. 271381, F. 272697, F. 282183, F. 270704, F. 294870, F. 264381, F. 291505, F. 278405, F. 287243, F. 290225, F. 293294, F. 301006, F. 299498, F. 295300, F. 295453, F. 293292, F. 269381**). Besides the selectivity which is occasionally observed with regard to witnesses who are ultimately called to testify (**F. 270993, F. 244541**), selectivity is also noted in terms of the significance of the witness testimonies. As a result, there seems to be a dipole with the complainant being on one end and the investigated person on the other end, meaning the word of the former is against the word of the latter and, most of the times, the testimonies of the investigated officers tend to be of disproportionate and unjustified importance. At the same time any doubts arising contribute to the benefit of the investigated officers. (**F. 262865, F. 260309, F. 288914, F. 287243, F. 291505, F. 294870, F. 295300, F. 289235, F. 287343, F. 252323**). So do the contradictions in the victim's allegations, regardless of how significant they are, - slight time discrepancies or verbal paraphrases - that monopolize the argumentation of the discipline investigator and similarly promote the emergence of doubts towards the disciplinary responsibility (**F. 247668, F. 259610, F. 262531**). The questioning of the testimonies of victims and/or other individuals as unreliable without further investigation or justification from the very beginning, often provides an additional reason for doubt (**F. 262867, F. 269381, F. 287343, F. 270704, F. 245785, F. 289235, F. 287343**).

The emergence of doubts as a result of the disciplinary procedure disregards not only the requirements set through by the ECtHR case- law concerning the obligation for an effective investigation, but also the very purpose of the disciplinary control, as dictated from the provisions of Art. 24 of PD 120/2008, in the case of a PDE, and of Art. 26 of the same P.D., in the case of an EDE. Concurrent deficiencies that are still pointed out, despite the Ombudsman's relevant comments, are related inter alia to the failure to present photographs taken during forensic marking (**F. 270704, F. 26748**), the failure of cross verification of the complainant and the police officers involved (**F. 247668**) or the examining of witnesses without posing specific and clarifying questions (**F. 254289, F. 299498, F. 291505, F. 301006, F. 295453, F. 293292, F. 269381**) or, conversely, by posing very closed-ended questions, as a means to getting restricted responses (**F. 282183**) and tend to give the argument of doubt a discriminatory and equally convenient nature.

The assessment of testimonies and the identification of potential contradictions form part of the diagnostic duty which is involved in the administrative inquiry and therefore is subject to the rule of specific and thorough reasoning, as dictated by the combination of Articles 139 CCP and 8 para. 2 of PD 120/2008. In

this context, the general reference to contradictions or inconsistencies should be avoided, unless it is specifically justified, while the assessment, of all the testimonies of an administrative inquiry, should be comparative, combinational and maintain equal distances regarding the credibility of the allegations made by the complainant and the police officers involved. Coordinated taking and comparative reading of the affidavits also contributes to avoiding testimonies with similar, if not identical, content, which, apart from often slipping into absurd allegations, undermine the validity of the disciplinary procedure by responding to formalities which are devoid of any substance. (**F. 247083, F. 269138, F. 278405, F. 282183, F. 290633, F. 294870, F. 301006**).

Such a practice has similarly led the Court to rule repeatedly in favor of the violation of the procedural part of limb of Article 3 of the ECHR, because, among other serious shortcomings in the investigation: *"...the authorities appear to have accepted without reservation the version of the facts presented by the arresting police officers (...) They also too readily accepted the police's allegations*[129]*". A key parameter in favor of the identification of the same violation remains the fact that "no further action was taken with a view to resolve the discrepancy between the police officers' version of events (...) A possible investigative measure in this respect could have been to organise a face-to-face confrontation in order to assess the credibility of each side's statements as regards the facts*[130]*"*. Maintaining equal distance, however, is also required when assessing police statements with each other (**F. 290633, F. 293292, F. 245783**) or testimonies of other individuals (**F. 288646, F. 292439**) since, in this case as well, the concurrent insufficiency of justification raises legitimate questions as to the impartiality of the discipline investigator, reinforcing allegations of discriminatory treatment.

The exclusion of a key witness, let alone of the victims themselves, from the administrative investigation, due to their presence or stay abroad, as stated in at least four (4) cases handled by the Ombudsman, lacks a legal basis, given that the Art. 33 para. 1 of PD 120/2008 ensures the application of the provisions of the CPP for the summoning, the oath, the way of examining the witnesses, while Art. 216 para. 2 subparagraph 1 of the CCP dictates that: *"Witnesses residing abroad are examined by the local consular authorities".* Additionally, it contradicts the case- law of the ECtHR, which stipulates that identifying and examining a key witness in a case is one of the fundamental investigative steps required to ful-

129. ECtHR judgment *PARNOV v Moldova*, 13.07.2010.

130. ECtHR judgment, *TARJANI v. Hungary*, 10.10.2017.

fill the condition of conducting an independent and effective investigation.[131] (**F. 258681**). The shortcoming persists even in the cases, where the victim or the key witness finally testify after many months of delay due to the considerable amount of time that has elapsed to ensure their testimony and therefore the effectiveness of the investigation (**F. 246381, F. 291505**). The responsibility for this, however, is under no circumstances lying with the witness who was initially excluded and subsequently not summoned in a timely manner, but with the investigator conducting the disciplinary control, who, as underlined by the ECtHR, must act with promptness and diligence for the sake of completeness and effectiveness of the investigation[132] (**F. 230990**).

Similarly, the Ombudsman notes that, in order to ensure the summoning of witnesses of unknown residence and to guarantee that the summon is served on the witness, pursuant to Art. 33 para. 1, the provisions of Art. 156 of the CCP should apply. Otherwise, Art. 154 para. 2 stipulates the invalidity of the relevant reports (**F. 247939**).

5.1.b. Audiovisual material - Audio files

The obtainment and utilization of audiovisual material and photographic material in general has repeatedly been emphasized by the EMIDIPA as being one of the core elements that must be included in the disciplinary investigation in order for it to be considered thorough and factual, and consequently, in most cases, the investigator conducting the administrative control is requested in advance to ensure that such material is obtained and included in the file of the disciplinary case. Especially in the case of complaints regarding violation of the right to life, physical integrity or torture and other forms of degrading treatment, this request is made on a permanent basis. The same applies in the case of large-scale incidents, for which many parameters need to be clarified.

However, despite this special and in advance request, the Ombudsman finds that in most cases, the video footage either fails to be sought without any justification (**F. 271381, F. 272697, F. 200707, F. 262869, F. 247668, F. 294870, F. 269138, F. 262867, F. 278405, F. 289235, F. 290225, F. 290633, F. 301006, F. 291505**) even in cases where there is established knowledge of its existence (**F. 262197**),

131. The untimely identification of alien witnesses has already been raised in other cases of the National Mechanism, see EMIDIPA Report 2019, p. 97.

132. See, inter alia, ECtHR judgments *Assenov et al. v. Bulgaria* 28.10.1998, *Mikheyev v. Russia* 26.01.2006, *Dzhulay v. Ukraine*, 03.04.2014, *Lolayev v. Russia*, 15.01.2015.

or even when sought, it is not obtained, mainly due to the fact that it has already been deleted (**F. 299498**).

In conjunction to the above, it has been argued that the failure to seek and obtain video footage is based on no. 58/2005 decision of the Personal Data Protection Authority, according to which: *"the data will be kept for a maximum of seven (7) days after which the data shall be deleted"* and which also binds the operation of the Traffic Control and Monitoring Operations Room (THEPEK), which, in turn, manages the C4I camera system. Within this framework, the lapse of seven days renders any attempt to seek audiovisual material useless, due to its stipulated prior deletion.

Regarding this argument, the Ombudsman pleaded that the comprehensive reference to the decisions of the Personal Data Protection Authority must take into consideration the Directive 1/2011 on *"Use of video recording systems for the protection of persons and assets"* of the said Authority, which stipulates in Art. 8 that the data must be kept for a specified period of time in view of the intended purpose in question. If this purpose is related to an incident (e.g., theft, robbery, beating, etc.) against a third party, the controller is allowed to keep the images data for a period of three (3) months. It is clarified that in this specific case, the alleged incident concerned the brutal beating of an eighteen-year-old student by police forces, while a timely disciplinary control order could have ensured the three-month keeping of the material and in any case the investigation should have examined it (**F. 291379**).

This is also consistent with the established case-law of the ECtHR, which, in numerous cases of complaints regarding police misconduct has ruled in favor of the violation of Art. 3 of the ECHR, considering the investigation carried out to be defective, during which the existing video footage was not presented in its entirety and without any further processing due to its deletion within the excessively short and tight deadline of one month which was prescribed for its keeping. As highlighted in further detail: *"Had this not been the case, the authorities may have had strong evidence at their disposal to prove or disprove the applicant's allegations (...) With those important pieces of evidence missing, the authorities were, in the Court's view, hardly in a position to perform a thorough and effective investigation into the applicant's arguable claim that he was ill-treated by police officers. The above omissions necessarily prevented the national courts from making as full findings of fact as they might have otherwise done. An adequate investigation would have required diligence and promptness*[133]*"*.

133. ECtHR judgment, *PÓSA v. Hungary*, 07.07.2020.

In the light of the above ruling, but also of the general case-law of the ECtHR, which asserts that the seeking and obtainment of video footage constitutes a particularly critical piece of evidence for the investigation of the circumstances under which the alleged facts occurred[134], the Ombudsman emphasizes that the photographic and video footage should always be sought and secured in a timely manner. This should take place at a time when it still exists, while, when this is not possible, as indicated by the case-law of the ECtHR, the failure to secure the relevant and necessary video footage for the effectiveness of the instigation should be counterbalanced by other investigative measures, taking into account both the specific circumstances, which apply independently and compose the actual incidents of each case under investigation, and the actual range of investigative practices[135] (**F. 299498**).

However, even in cases where relevant video footage has been kept and forms part of the disciplinary procedure, deficiencies pertaining either to its processing or its evaluation are identified. In the former case, the existing video footage is omitted to be sent to the competent police services for further processing and examination in favor of the preparatory inquiry while, at the same time, it is unjustifiably excluded from the disciplinary file which is forwarded to the EMIDIPA. (**F. 262865, F. 267480**). In terms of evaluation, it is sometimes found to be partial and deficient (**F. 287243**), falling into logical fallacies through the invocation of the presumption of innocence and the principle "in dubio pro reo" (**F. 270700**) and on other occasions it is limited to accepting the interpretation made by the investigated police officers, without making any substantial attempt to clarify the opposite, which is portrayed by the image material (**F. 282183, F. 293294, F. 295300**). In these cases, the Ombudsman, requesting additional explanation, highlights that the formal evaluation and partial utilization of the available evidence violates the principle of full justification, reminding that *"The freedom to evaluate evidence (moral proof: Article 177 of the CCP) reaches its jurisprudential limit in the requirement of reasoning, so that the judicial judgment is not reduced to the "innermost" conviction (conviction intime) of the judge[136]"*. In fact, related to this requirement is the principle of searching for the truth and the principle of thorough investigation of the case.

134. ECtHR judgments *Lapshin v. Azerbaijan* 20.5.2021, *Magnitskiy et al v. Russia* 27.08.2019.

135. ECtHR judgment *HENTSCHELAND STARK v. Germany* 09.11.2017.

136. https://old.synigoros.gr/resources/docs/astinomikoi.pdf.

Along with the necessity of obtaining and evaluating the video footage, especially in critical cases, the Ombudsman also emphasizes that the significance of relevant conversation material between the police officers operating, and the operations center which should be evaluated and forwarded to the independent authority. Although the response of the Hellenic Police has been positive in several cases, there have been isolated cases (**F. 271379, F. 288646, F. 289235, F. 295300, F. 295453**), in which the refusal to provide the Authority with photocopies of the electronic audio file or of the transcripts of potential conversations via radio, more specifically in a case of investigation of illegal use of a firearm, was based on the confidentiality of communications (**F. 247083**). EMIDIPA objected to this argument by referring to the provisions which delimit the institutional framework of its operation, in particular those included in Art. 56 para. 7 of L. 4443/2016 combined with those in Art. 188 para. 7 of L. 4662/2020, pursuant to which the Ombudsman shall request and receive copies of documents pertinent to cases, unless they are classified as confidential on the grounds that they concern national defense, state security and international relations. Failure to comply with the above conditions deprives the refusal to provide copies of any legal basis. It is also emphasized that, according to the aforementioned legal framework, all the information that the Authority receives is used solely for the performance of its mandate as EMIDIPA, as there is an additional duty of confidentiality.

Finally, the seeking and obtainment of the conversation material between the police officers under investigation and the operations center, without its parallel utilization and critical assessment, both in relation to the rest of the evidence and to the actual incidents, once again tends to serve the formalities of administrative investigation to the detriment of the substance. Therefore, in the case of **F. 271379** the raid conducted by police officers inside an apartment building without a prior order from the operations center, as stated by the investigator conducting the preliminary administrative inquiry, although it contradicts the allegations of the police officers involved, is not further investigated, thus raising concerns as to the legality of the raid, given that there was no legal prosecution, as well as to the effectiveness of disciplinary control.

5.1.c. Medical certificates opinions and forensic reports

The collection and utilization of medical certificates and forensic reports in the context of investigating incidents of police arbitrariness are de facto exclusively linked to complaints regarding serious ill-treatment and even torture, as well as violations of the right to life by the police authorities. The second fact that emerges in relation to the context of seeking specific evidence is indicative of the

status of the complainant, who, in any case, is under police control, whether it is a simple identity check, or it includes being in detention. Reference has already been made to the absolute nature of the prohibition stipulated in Article 3 of the ECHR, as well as to the requirements, which have been consolidated through the case-law of the ECtHR regarding the investigation carried out in cases of violation thereof.

The power relation that by definition connects the police officers under investigation with the citizen under police control, on the one hand dictates the submission of evidence, which is beyond reasonable dispute and, on the other hand, reverses the burden of proof, shifting it to the authorities. This obligation is greatly increased, for obvious reasons, when there are relevant medical opinions or forensic examinations, and, even when such opinions do not exist, the claim that the alleged ill-treatment is not confirmed is not sufficient. On the contrary, the ECtHR deems that in such cases, the police have to provide adequate, convincing and substantiated explanations in order to dispel any doubts and to call into question the content of the victim's complaint: *"Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard [for a comprehensive and effective investigation]*[137]*"*.

In addition to the necessity that arises in connection with the collection, study, and evaluation of medical and forensic reports during the conduct of a disciplinary investigation, the above framework also reflects the main argument made by the Ombudsman in cases of inadequate seeking and use of the above evidence. These include cases in which the medical reports are neither sought nor received and, consequently, are not included in the disciplinary case file, as they should have been, given the provisions of Art. 148 para. 1 of PD 141/1991, in force, when i:e the transfer of the complainant to a hospital has been made under the care of the police (**F. 270704, F. 244541, F. 250035**) or when the complainant is arrested while being hospitalized, following a complaint by the police officer under investigation against the complainant with the procedure of flagrante delicto (**F. 270993**). Similar omissions are observed in cases where the complainant makes reference to the existence and content of medical reports at his/her disposal, yet no action is taken to collect them (**F. 269135, F. 291505**) or the action taken is not sufficient (**F. 295300**).

137. ECtHR judgment, *Emin Huseynov v. Azerbaijan*, 07.05.2015.

These shortcomings are sometimes attempted to be addressed abstractly and one-dimensionally, without attempting to correlate or compare them with other evidence, but solely through empirical police assessment of the findings of particularly deficient forensic reports, which fall short of the CPT rules and guidelines set by the Istanbul Protocol, which have been ratified by the case-law of ECtHR[138], as a guarantee in favor of a thorough investigation and evidence "beyond any reasonable doubt" in cases of complaints regarding ill-treatment (**F. 270704, F. 269135**). Indicatively, it is noted that: *"A forensic examination should include at least the following elements: patient demographics, the patient's report of how the injuries were caused, a detailed description of each injury, a reasoned conclusion as to the cause and time of the injury[139]"*. Deviations from the above criteria undermine the guaranteeing nature of forensic reports and therefore constitute a defect in the obligation of the national Authorities to carry out a thorough comprehensive and effective investigation, which, as the Ombudsman reminds, has recently contributed to the ECtHR's judgment against the State.[140] Notably, in the case **F. 270704**, regarding the alleged beating of a citizen by police officers during a protest march, in the light of the aforementioned guidelines combined with deficiencies in the content of the forensic report, the Ombudsman disapproved of the fact that the forensic medical expert made a series of allegations as to what the injuries that the alleged victim suffered would look like, were the victim's complaint valid, which, however, insofar as they were not correlated with the actual incidents, were equivalent to scientifically unsubstantiated conjectures.

Conversely, the absence of a forensic examination serves as a pretext for disregarding serious injuries which, however, are confirmed by medical reports which were issued after the transfer of a detainee from their detention facility to a public hospital (**F. 292900**). In this specific case a comparison was aptly made between the medically established findings and the reported behaviors. Nevertheless, the drawing of conclusions regarding deviation and the simultaneous speculation that the injuries could have been caused at a prior time by other police officers is rendered problematic, given that it is neither supported by expert knowledge, as dictated by the ECtHR, nor is it accompanied by an order for a new or supplementary investigation in order to subject other or more police officers to disciplinary investigation. Given the established need and additional value of forensic examination over medical reports, the absence of the former cannot be replaced by

138. ECtHR judgment, *Akkoc v. Turkey*, 18.12.1996.

139. See CPT report on Greece 20.12.2006.

140. ECtHR judgment, *Sarwari et al. v. Greece*, 11.04.2019.

interpretive contortions, but should be compensated for through the specialized knowledge of a medical expert, in order to safeguard the guarantees required in favor of an independent and meaningful investigation. This has also been pointed out by the Ombudsman regarding the study and assessment of medical reports, especially in the case of discrepancies and in terms of the time that has elapsed between the complaint of brutal behavior and the issuance of a medical report (**F. 240007**), as well as in the case of particularly long delays in conducting a forensic examination, which resulted in the minor victim being examined thirty-five (35) days after the incident, while the relevant prosecutor's order was issued in a timely manner, thus undermining the security of its findings (**F. 290633**).

In the cases of discrepancies or incompatibilities between the allegations of the victim and the medical findings, the ECtHR emphasizes the need to obtain an additional expert opinion by a medical expert in order to explain how the injuries were caused and thus to resolve the discrepancies between the differing allegations[141]. It is also noted that in the Greek Law, this requirement is ensured by Art. 2 of L. 3772/2009, in combination with the relevant opinions for its implementation 4/2011 and 3/2017 of the Prosecutor of the Supreme Court. In the same direction, recognizing that the omission of assessment or the inadequate evaluation of forensic medical examinations is a common ground in cases of complaints regarding ill-treatment, the Mechanism outright calls to the attention of those conducting the administrative inquiries the need for a sworn statement of doctors/forensic medical experts as to the severity of the injuries in r comparison with the complaints, based on the case-law of ECtHR and a Greek case[142] (**F. 262867, F. 269381, F. 278405, F. 293292**).

In any case, the omission of a forensic medical report, arguing that there is no testimony to confirm it, is unfounded, as its very existence, like that of any medical opinion, constitutes objective evidence and at the same time a prerequisite for a thorough investigation, which the authorities have to take into consideration in order to provide *"a rational explanation for the causes of the injury, the absence of which definitely poses a problem in the implementation of Article 3 of the ECHR[143]"*. This is even more critical when the injuries identified by the medical expert are characterized as recent compared to the ones already suffered by the victim of a car accident in the past. Additionally it is confirmed that these recent injuries are

141. ECtHR judgment, *TARJANI v. Hungary*, 10.10.2017.

142. ECtHR judgment, *Andersen v. Greece*, 26.04.2018.

143. ECtHR judgments, *Aksoy v. Turkey*, 18.12.1996, *L.M v. Greece*, 13.12.2005.

firstly due to the use of a crushing blunt instrument and then to (subsequent) fall, which is by no means evaluated at disciplinary level (**F. 290225**).

The issue of the unilateralism and interpretive contortions remains even when there is no question of the completeness of the forensic examination or the absence of additional evidence, but when the latter is not taken into account during the combined study of the findings, whether these concern supplementary medical opinions (**F. 260309**), sometimes even in combination with photographic material (**F. 269138**) or even eyewitnesses confirming the complaints (**F. 247668**). The issue of concealment also arises in the event that, although the disciplinary investigation conducted concerns the illegal use of a firearm, during its conduct, a beating complaint arises, which is considered paradoxically unfounded, based on the forensic report of the investigated police officers and not on the medical opinions and brain CT scans that the complainants underwent after they were transferred to a public hospital by the police, in order to receive first aid treatment (**F. 250035**).

The lack of collection or assessment of medical reports during the disciplinary control is not remedied by the argument that the transfer of a detainee to a hospital under the care of the police is self-evidently in favor of refuting his allegations of police ill-treatment (**F. 254608**). In response, the Ombudsman primarily cites the Constitution, which through the provisions of Art. 5 para. 2 and 5 safeguards the protection of life, integrity and health of prisoners. Furthermore, Articles 25, 26, 27, 30 and 74 of the Penitentiary Code specify the obligation to ensure the prisoners' health. In addition, Art. 66 para. 5 subparagraph d of the PD 141/1991 stipulates that the police officers of the detention guard are responsible, inter alia, for the life and physical integrity of the detainees. Finally, the ECtHR emphasizes that: *"The State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance*[144]*"*, otherwise raising the issue of violation of Art. 3[145] or 2[146] of the

144. ECtHR judgment *Kudla v. Poland*, 26.10. 2000.

145. ECtHR judgments *Sheriff v. Greece*, 02.11.2006, ECtHR judgment *Kotsavtis v. Greece*, 12.06. 2008.

146. ECtHR judgments *Dzieciak v. Poland* 09.12.2008, ECtHR judgment *Jasinskis v. Latvia*, 21.12.2010.

ECHR. Similarly, in the same case, the shift of responsibility to the complainant for failing to conduct a medical examination was deemed unorthodox, although a relevant forensic order was pending, which was aggravated by the fact that the person was in detention. In addition, the Ombudsman pointed out that the medical expertise, which corresponds to the opinions delivered by experts, apart from being one of the most important means of proof, due to the guarantees it provides, constitutes an investigative act corresponding to the procedure of its conducting. The responsibility for conducting investigative acts, in the context of the preliminary investigation, falls on the respective competent investigating officer, pursuant to the provisions of Art. 239 and 243 of the CCP, who in the cases of administrative control corresponds in analogy to the person conducting it, pursuant to Art. 33 para. 1 of PD 120/2008.

Furthermore, in the case of detainees, the ECtHR, highlights the necessity to conduct a medical examination of a person prior to their being detained. More specifically: *"Where an individual is taken into custody in good health but is found to be injured at the time of elease, it is incumbent on the State to provide a plausible explanation of how those injuries were aused and to produce evidence casting doubt on the veracity of the victim's allegations, particularly if those allegations are backed up by medical reports. Failing this, a clear issue arises under Article 3 of the Convention [...] The Court finds it regrettable that the applicant was not taken for a medical examination before being taken into custody at the [.....] police station. Such an examination would have been appropriate, particularly bearing in mind that the applicant had allegedly been in a fight with other persons. Such a report could also have provided clarification regarding the possibility that third parties might have contributed to the applicant's condition[147]"*.

This decision assisted the Ombudsman's main argument in the case of a newly admitted detainee in the psychiatric hospital of Korydallos prison, whose injuries were reported by the prison officials who received him upon his admission (**F. 241553**). In this specific case, the Ombudsman argued, inter alia, that in order to obtain evidence of any incidents that violate provisions of fundamental importance, such as Article 3, a medical examination of a person should be ensured before they are detained, especially when they have external injuries. In the latter case, this fact should be recorded separately in the relevant official documents, as in Log of Offenses and Incidents (VAS)or in the Prisoners' Register upon admission, especially in cases involving areas where a video surveillance system is

147. ECtHR judgment, *TÜRKAN v. Turkey* 18.09.2008.

not operational. A similar argument was made by the Ombudsman in an opposite case, in which the time when the reported injuries of the detainee were caused was disputed, although there was no element in the disciplinary case file to suggest that the victim was suffering injuries at the time of his transfer (**F. 299498**). On the contrary, EMIDIPA argued that, insofar as the recording of medical examinations in official documents or records remains an issue, the allegation of absence thereof does not automatically indicate the absence of medical evidence, while disputing the validity of such a complaint as well as the formality of their submission to the Council of Europe Commission (**F. 246381**).

The guarantee of a preliminary medical examination, according to the CPT, should be extended to those arrested. As specifically stated,: *"It is even more important that the arrested person be examined medically before being taken into custody. This would not only ensure that the individual is fit for questioning in police custody but would also allow the defendant government to satisfy the burden of providing a reasonable explanation for these injuries. In this context, The Court notes that a medical examination, combined with the right of access to a lawyer and the right to have a third party notified of their detention, are fundamental safeguards against ill-treatment of detainees that must apply from the very beginning of deprivation of liberty, regardless of how it might be described under the relevant legal system (arrest, etc.)[148]"*.

In support of the above position, the ECtHR clarifies that the obligation of the authorities to provide reasonable explanations due to the substantial evidence produced regarding the origin of the injuries of a person who is under police control *"covers the period, pursuant to the now established case-law of the Court, not only of police detention, but also of arrest [...] In such cases, the burden of proof lies with the authorities and it falls upon to the government to provide a reasonable explanation as to the origin of the injuries suffered during the aforementioned period, including the arrest stage, and to provide evidence to substantiate the facts which call into question the victim's allegations, especially if they are supported by medical documents[149]"*.

The same position is reflected in the case-law of the national courts, which, interpreting the provision of Article 137A of the PC, recognizes that: *"The term "detainee" shall therefore mean not only the individual confined in an organized detention*

148. See 2nd General Report of the European Commission on the Prevention of Torture, CPT / Inf / E (2002) 1 - Rev. 2006- §36.

149. ECtHR judgment, *Günaydın v. Turkey* 13.12.2005.

facility (detention room, prison, concentration camp), but also the arrested person, prior to the drafting of the arrest report and the detained person for whom there was no reason to draft such report, given that the stage of transfer or apprehension is particularly dangerous for the occurrence of such barbaric behavior, being in close time proximity to the presumed illegal or insubordinate conduct[150]*"*.

In the light of the above, the forensic medical report of the arrested, which was neither sought nor included in the disciplinary file, although it existed, was the main reason for the referral and supplementation of the preliminary administrative inquiry, the operative part of which was considered deficient in terms of documentation and justification due to lack thereof (**F. 259610**).

5.1.d. Expert reports

This category of evidence is mostly related to sworn administrative inquiries to control the illicit use of firearms and therefore includes ballistic reports, reports on the laboratory examination of shell casings, weapons inspection reports, and, depending on the circumstances, should be combined with expert reports on the valuation of motor vehicles or with medical expertise, eyewitnesses, audio or video footage as well as relevant photographic material.

The insistence on the combined obtainment and assessment of the specific evidence is dictated as a result of the intensity of police brutality exercised, which is by definition involved in the cases of weapon use and of the subsequent increased obligation of the disciplinary investigation to fully determine the circumstances under which the incident took place. As the Court suggests: *"This is not an obligation of result, but of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, inter alia, eyewitness testimony and forensic evidence. A requirement of promptness and reasonable expedition is implicit in this context. Any deficiency in the investigation which undermines its capability of establishing the circumstances of the case or the person responsible is liable to fall foul of the required standard of effectiveness.*[151]*"*

In fact, this is what the no. 7100/14/4-θ΄, 25.01.2008 circular order of the Chief of the Hellenic Police seeks to ensure, which, in compliance with the judgments of the case-law of the ECtHR, following the issuance of a conviction judgment against the State[152], stipulates, inter alia, that: *"in any case of firearm use by a*

150. See Court of Appeal of Thessaloniki 947/2018.

151. ECtHR judgment, *Makaratzis v. Greece*, 20.12.2004.

152. ECtHR judgment, *Celniku v. Greece*, 05.07.2007.

police officer in the context of their police action (intimidating shooting, shooting against objects, shooting for immobilization and neutralization pursuant to Article 1 case d of L. 3169/2003) an EDE should be carried out", namely, to automatically conduct disciplinary proceedings, thus indicating the gravity with which the use of a weapon is dealt with, as well as the severity of such an action, as in this way it is ensured that the case is assigned to high-ranking and more experienced police officers.

Nevertheless, EMIDIPA in its referral finding (**F. 275404)** points out that it is not enough only to carry out an EDE, which will be based on the evidence of the respective criminal case file, but, when it comes to investigating cases of shots fired by police officers, the competent officers conducting the preliminary investigation should always secure the evidence regarding the trajectory of the bullets in order to facilitate the disciplinary control. The persons conducting the administrative inquiry should, pursuant to the provisions of PD 120/2008, always seek, collect and evaluate the inclusion of any evidence in the documents of the disciplinary case file that proves the trajectory of the shootings as well as their number, including experts' reports, reports of seizure of vehicles, photographs, and if no such documents exist, they should utilize any provision of PD 120/2008 or other pertaining to the use of weapons by police officers so as to safeguard the collection of such evidence.

In this specific case (**F. 275404**), concerning the discharge and subsequent loss of a service weapon, which was borne by a police officer upon his leaving an entertainment facility, the Ombudsman additionally notes that Article 8 para. 4 of no. 8517/4/7-μβ, 17.02.2004 of the unpublished Decision of the Minister of Public Order, stipulates the conduct of an EDE to verify the circumstances under which weapons are lost or stolen, identify the persons responsible and impose proportionate administrative sanctions, while para. 6 dictates that a copy of the criminal case file should be sent to the investigator conducting the EDE. In para. 8, the same Decision dictates the independent laboratory examination of samples of shell casings and projectiles in the context of the disciplinary investigation of the case.

The reference to the aforementioned provisions and the invocation of Art. 33 para.1 of PD 120/2008, on the application by analogy of the provisions of the CCP concerning evidence in the disciplinary law and therefore the demand for experts' opinion during the disciplinary investigation, are intended to remind the independence between criminal and disciplinary proceedings, so that in case of untimely completion of the former procedure (or absence of it thereof) the latter is not delayed or automatically canceled. By utilizing the above provisions, the conduct of preliminary investigations could be ordered so as to serve needs of

the disciplinary procedure. The independence of these two procedures, as set out in Article 48 of PD 120/2008, despite their similarity at an investigative level, is rendered meaningless when one of them is influenced by the other one and, consequently, the completion of the disciplinary control ends up being dependent on the completion of the criminal investigation, thereby jeopardizing the loss of evidence and ultimately nullifying the differentiation of their purpose.

In the light of the above, EMIDIPA in several cases observed completeness as to the collection and evaluation of the specific evidence (**F. 243951, F. 253607, F. 273569, F. 252024, F. 262197, F. 280646, F. 269382**), while in other cases, attempts were made to cover the required evidence upon recommendation by the Ombudsman (**F. 242958. F. 247083, F. 242958, F. 267472**). The latter cases were archived by the Authority, either maintaining some general reservations or making future recommendations, although the outcome of the investigation was finally considered to be satisfactorily justified, given the subsequent sufficiency of evidence.

Inter alia, it was highlighted that the partial collection of evidence concerning expert reports is not covered by the control as to the suitability, proportionality, and necessity of weapon use, which, in any case, must be taken into consideration, pursuant to the provisions of L. 3169/2003 on the carrying and use of firearms by police officers and their training in it. This is because, as the Authority has already pointed out, the dangerousness of the shots should not be judged by its results, i.e., by the occurrence or non-occurrence of violation of any legally protected right, but by the inherent risk of such violation in the use of firearms under certain conditions[153]. Moreover, the Ombudsman adds that the absence of a ballistic report cannot be compensated for by invoking the dangerousness of the perpetrators. Although it is considered reasonable that it was regarded as a parameter of the conditions under which the police acted, pursuant to the provisions of Art. 26 of PD 120/2008, the focus of the EDE always remains the police action itself and whether or not it is subject to a specific disciplinary misconduct. Furthermore, the scientific inadequacy and ontological abstraction with which this concept is associated should not be overlooked[154] (**F. 242958**).

Similarly, the EMIDIPA commented that the deficiencies, either in terms of the required evidence in the form of experts' reports, or in terms of their assessment,

153. EMIDIPA Special Report 2017-2018, p. 31.

154. Alexiadis S., 1986, "The dangerousness of the criminal: a fake construction" *HOMAGE TO N. Chorafas, I. Gafos, K. Gardikas*, vol 2, Ant. *N. Sakkoulas,Athens*, p. 131-144.

cannot be counterbalanced by a general and vague invocation of defense. The provisions of disciplinary law for police personnel, and specifically of Art. 8 of PD 120/2008, dictate that the rules and principles of criminal law and criminal procedure apply mutatis mutandis to disciplinary law and especially those pertaining to the grounds which negate the wrongdoing of the act and the accountability, as is the case in the event that a state of defense is established. Based on this regulatory framework, it becomes evident that in order to invoke and establish a state of defense during the conduct of disciplinary controls by the Hellenic Police as a reason for removing the disciplinary liability of the police officers, the fulfillment of the legal conditions set out by the substantive criminal law and specifically Article 22 of the Penal Code is required. Invoking the international literature and police practice - which in any case, if raised, must be specialized - in terms of the stress experienced by police officers at an operational level, does not amount to defense, but can act as mitigating circumstances, which constitutes a disciplinary misconduct regarding the disciplinary penalty imposed (**F. 247083**).

In the cases **F. 280646** and **F. 269382** It was deemed appropriate to make some recommendations for the future regarding the contribution and evaluation of the necessity of using a firearm, by making reference to specific decisions of the ECtHR. Interpreting the provisions of Art. 2 of ECHR on the legally protected right of persons to life and the certain limited cases, in which the use of force, as strictly necessary, implies the loss of the above right without there being any violation thereof, the ECtHR clarifies that: *"the use of firearms which may jeopardize human life cannot be justified in principle for the purpose of arresting an individual when it is known that this specific individual does not pose a threat to the life or physical integrity of anyone and is not suspected to have committed a violent offense, even if it may result in the opportunity to arrest the individual concerned being lost*[155]*"*. In addition, in its judgment against our Country, it emphasizes that, even if no homicidal intent is charged against the police officers, the fact that the applicant was not deprived of his or her life purely by chance, makes him or her *"a victim of conduct which, by its nature put his or her life at risk even though he or she ultimately survived. Article 2 is therefore applicable in the present case*[156]*"*.

In combination with the above, the Court dictates: *"The circumstances in which deprivation of life may be justified must be strictly construed[...] In addition to defining the circumstances in which deprivation of life may be justified, Article 2*

155. ECtHR judgment, *TZEKOV v. Bulgaria* 23.02.2006.

156. ECtHR judgment, *X.M. v. Greece* 20.12.2004.

implies a primary duty of the State to secure the right to life, putting in place an appropriate legal and administrative framework defining the limited circumstances in which law enforcement agents may use force and firearms, in the light of the relevant international standards[157]*"*. Regarding the national legal framework governing arrest operations, it is pointed out that: *"recourse to firearms is dependent on a careful assessment of the situation, and especially on an evaluation of the nature of the offense committed by the person in question and of the threat he or she posed [...] law enforcement agents must be trained to assess whether or not there is an absolute necessity to use firearms, not only on the basis of the letter of the relevant regulations, but also with due regard to the pre-eminence of respect for human life as a fundamental value*[158]*"*

Finally, in the cases **F. 242958** and **F. 267472**, concerning the discharge of a service weapon, although the Ombudsman found that the administrative control was thorough in terms of evidence collection and assessment, including, not only witness testimonies but also all the necessary experts' reports, as well as certificates of relevant training seminars that the investigated officers had attended, medical reports assessing their psychological state, the subsumption of the principal facts under the no. 8517/4/7-μβ-2004 unpublished Decision of the Minister of Public Order on the armament of police officers, in conjunction with the relevant shooting handbook taught in the schools of the Police Academy, all of which contributed to the view that the required measures were complied with by the police officers, the administrative control resulted in the assignment of disciplinary liability, in the former case without stating any grounds and in the latter one by invoking inadvertent negligence.

The Ombudsman's intervention underlined the contradiction between the case history and the operative part of the disciplinary report, on the one hand asking for its removal and on the other hand recalling the obligation of full and comprehensive reasoning. At the same time, the Ombudsman commented that, according to the prevailing theoretical view, inadvertent negligence exists when the perpetrator does not even suspect that his or her conduct can bring about the criminal result that occurred. However, had the perpetrator paid the attention he or she should and could have paid, the outcome would have been prevented[159]. The basic distinction between an accidental incident and inadvertent negligence

157. ECtHR judgment *PUTINTSEVA v. Russia* 10.05.2012.

158. ECtHR judgment *Mr McCann et al. v. Great Britain*, 27.09.1995.

159. Kostaras A., 2019, *Criminal Law - Concepts and Institutions of the General Part*, Law Library, 3rd edition.

is that in the former case, the occurrence of the result is affected by various imponderables, which, however hard one tries and however much diligence one demonstrates, could not have been prevented or avoided. Contrastingly, in the case of inadvertent negligence, the occurrence of the result is predictable, since it depends on the conduct of the perpetrator, who is ultimately held liable for the result, given that he did not do what he should and could have done to predict it and, consequently, to avoid it[160].

5.2. As to the investigation procedure

5.2.a. Independence of the disciplinary trial from the criminal one

The most significant shortcoming that concerns EMIDIPA, both in terms of its frequency and substance, is the lack of independence between disciplinary procedure from criminal proceedings. The significance of this issue had become evident through its incorporation in the first special report of the Mechanism and even more through its inclusion among the legislative proposals which the Ombudsman suggested in the as of October 2018 letter under prot. no. 135 to the Minister of Justice, Transparency and Human Rights as well as the Secretary General of Transparency and Human Rights. More specifically, in order to limit the applied practice of the competent disciplinary bodies to suspend or file the disciplinary case due to parallel criminal investigation of the same case, it was deemed appropriate by the Mechanism to tighten the time limit within which the disciplinary procedure can be suspended. In this light, in case of investigation of a disciplinary misconduct which also constitutes a criminal offense according to the PC, the Ombudsman suggested that the exceptional suspension of the disciplinary procedure be allowed only after a summons or a writ of summons concerning the same acts has been served in accordance with the CCP.

The complete adoption of this proposal was reflected in the provisions of Art. 1 para. 3 of PD 111/2019, replacing the first subparagraph of Art. 48 para. 3 of PD 120/2008. In accordance with this new provision, criminal proceedings do not suspend disciplinary proceedings; however, the bodies competent for the disciplinary prosecution and the competent disciplinary bodies may exceptionally, and if deemed necessary, order, by a freely revocable decision, the suspension of the disciplinary procedure for one year, only after a summons or the writ of summons

160. 1. Androulakis N., 2006, *General Part I*, P. N. Sakkoulas Publications 2. Kaiafa - Gbandi M., 1992, *External and Internal Negligence, Sakkoulas publications.*

has been served pursuant to the CCP. That is, in cases where two parallel procedures for the control of police action have been initiated, the possibility of suspension of disciplinary proceedings exists only under the condition that criminal prosecution has already been initiated and a criminal court's judgment is pending.

Despite the limitations of the aforementioned provision, the inclusion of this issue in the two special reports of EMIDIPA that followed, raises reasonable concerns as to its proper implementation and, possibly, its adequacy. These concerns remain persistent in 2021 as well, given that out of all the cases that the Mechanism handled, a large number focused on the lack of independence and autonomy between disciplinary and criminal proceedings, in violation of Art. 48 of PD 120/2008. A parameter of this lack is usually the additional lack of full and comprehensive reasoning, while its most evident consequence is the extension of disciplinary control.

On a practical level, these observations involve, first and foremost, the uncritical identification of disciplinary offenses with criminal ones, even in cases where the order for disciplinary control either refers specifically to offenses of pure disciplinary nature, or includes the general reference to the detection of additional disciplinary offenses, in addition to reported conducts (**F. 254608, F. 280646, F. 252024, F. 262528, F. 292900, F. 230990, F. 244541, F. 256278, F. 247701, F. 290633)**. The developments initiated by such a practice form an extended phenotype of identification of the two procedures. The simplest version is equivalent to failure to take any action in the context of performing the investigative duty during the disciplinary procedure, resulting in its conduct unjustifiably pending the criminal investigation (**F. 275404**) or the disciplinary findings report being based entirely on the criminal case file (**F. 247668**). Failure to file a complaint (**F. 269135, F. 271378, F. 258681, F. 278405, F. 270704, F. 269381, F. 288914, F. 294870, F. 288914, F. 269381, F. 294870**), the withdrawal of complaint by the victim (**F. 276047, F. 281515**) and even the victim's mere declaration of intent to withdraw a complaint(**F. 301006, F. 268504**) or the dismissal of the victim's lawsuit by a prosecutor's order (**F. 287631, F. 257375, F. 276290, F. 277102, F. 247701, F. 243707, F. 290633**) often reinforce the argument for the completion of disciplinary control and the archiving of the case, given the absence of pending criminal proceedings. Alternatively, a similar argument is made as a pretext for the negligence to seek substantial witnesses and the subsequent failure to conduct a comprehensive investigation (**F. 301006**). The opposite argument, that is, the existence of a criminal case (**F. 268504**), or even the initiation of criminal pre-trial proceedings (**F. 262865, F. 260309**), automatically serve in favor of the suspension of disciplinary control, thereby in the latter case violating the newly established provision of Art. 1 para. 3 of PD 111/2019.

In other cases, the non-observance of the independence and autonomy of the two proceedings is accompanied by the observation of selective utilization of criminal cases files. These include cases in which both the conduct of the police officers and that of the victims are criminally investigated by virtue of an exchange of lawsuits filed from both sides. In this context, the conduct of the alleged victim is placed at the center of the disciplinary control, arguing, by association, in favor of the lawful conduct of the investigated police officers and thereby suggesting the corresponding shifting of liability. On a practical level, this is combined with a series of actions which were required, but omitted, at the level of ex-officio criminal pre-trial proceedings, pursuant to the provisions of Art. 245 of the CCP. In the end, the omission of these actions directly affects the forming of the criminal court's judgment and through it, the disciplinary result, as the latter is limited to the findings of the criminal procedure which has been initiated against the victim, whether this means the exercise of criminal prosecution (**F. 244541**), or the issuance of a judgment of conviction at first instance (**F. 267480**). Such an approach has the consequence that the ordered PDE for ill-treatment, scrupulously abiding by the progress of the criminal proceedings, is suspended without any further justification, and instead it is explicitly requested that the criminal case file against the investigated police officers, following the victim's complaint be excluded and not associated with the discipline procedure. In fact the invocation of the relevant exemption order was not contained in the disciplinary case file (**F. 260309**). In these cases, the Ombudsman has emphasized that it is not only the pretextual and equally discriminatory conduct of the disciplinary proceedings that are examined, but also reasonable objections are raised concerning the instrumentalization of criminal law.

Similar observations are made in the case of two parallel and unrelated, although concerning the same conduct of a police officer, criminal proceedings. In this case the disciplinary investigation adopted the evidence provided in the one of the above cases, and particularly the exculpatory content of its outcome (**F. 230990**). The consequences, however, are even more pronounced when the judgment of acquittal concerns the victim's conduct, the emphasis on which has been the basis for assessing the conduct of the police officers and, consequently, the removal of their disciplinary liability. Particularly as concerns complaints regarding serious ill-treatment of arrested persons, such an outcome not only raises questions about the effectiveness and independence of the disciplinary proceedings, but also raises issues as to the legality of the victim's arrest, extending the observations to abuse of power and exceeding the rule of law[161] (**F. 270704**).

161. ECtHR judgments, *Chahal v. United Kingdom*, 15.11.1996, *Saadi v. Italy 28.02.2008*, *Babar*

The case **F. 268504**, which similarly concerned allegations of ill-treatment, can be an excellent example of how disciplinary control is affected when its progress and development depends on the concurrent criminal investigation. More specifically, the first summary report of the preliminary administrative control of the case concluded that there was no need to conduct a disciplinary control regarding possible disciplinary offenses committed by the investigated police officer, thus archiving the case. The same was reiterated a year later, after an evaluation of the preliminary criminal investigation that was conducted by the Directorate of Internal Affairs by order of the Prosecutor of the Athens Court of First Instance, concluding that the pending criminal case file did not reveal any reprehensible conduct of the investigated police officer.

The above view was completely reversed after criminal prosecution having being exercised against the investigated police officer. The conduct of a criminal trial, triggered the need to withdraw the disciplinary case file from the archive and supplement the PDE. Based on almost the same evidence, which had already twice in the past led to the judgment that there was no disciplinary misconduct on the part of the investigated police officer, the PDE report concluded that, the completion of the relevant criminal trial was necessary before the imposition or non-imposition of any disciplinary penalty, since the reported acts constituted essentially criminal offenses, with the criminal courts now having the power to adjudicate them. Subsequently, the report emphasized the need to correlate the final judgment of the criminal proceedings with the administrative investigation and consider them jointly, on the grounds of serious doubt. Under this reasoning, the investigator carrying out the PDE requested the suspension of the disciplinary proceedings until the issuance of a judgment of the criminal court, pursuant to Art. 48 para. 3 of PD 120/2008.

The judgment of conviction issued by the criminal court turned the above serious doubts concerning the existence of disciplinary liability of the investigated police officer into concrete indications, resulting in the change of status of the disciplinary control, turning the PDE into an EDE. However, the findings of the EDE were in line with the progression of the criminal case, concluding that the possibility of exemption from penalty and termination of criminal prosecution proceedings in this case, inevitably eliminated the need for disciplinary control and removed any disciplinary liability.

The mere fact of the time that elapsed between the end of July 2014, when the

Ahmad et al. v. the United Kingdom, 10.04.2012.

disciplinary control of the case was ordered at a preliminary level, until mid-March 2020, when the report on the sworn administrative inquiry was drawn up, is sufficient to reveal the shortcoming as to the effectiveness of the disciplinary proceedings, according to the established case-law of the ECtHR. Among the numerous parameters set by the Court as criteria for conducting an independent and effective investigation is the promptness with which the disciplinary proceedings are conducted[162]. At the same time, it emphasizes that even if there are obstacles in the development of the disciplinary investigation in a particular case, the immediate response of the authorities to investigate the use of deadly force or means or to investigate allegations regarding ill-treatment is considered essential so as to maintain public confidence in the authorities' respect for the rule of law and to avoid any form of tolerance or concealment of illegal acts[163].

Similarly, the ECHR, with its established case-law, advocates the independence between the disciplinary and criminal proceedings, which can be conducted in parallel, without the slightest obligation for one of them to await the completion of the other one and without raising any issue of violation of the presumption of innocence[164]. The case-law of the CoS follows a similar direction, having the decision 4662/2012 of its Plenary Session as an interpretive guideline, which concludes that the only commitment produced by the criminal court for the disciplinary body is drawn from the judgment of the former only as to the existence or absence of the actual incidents which substantiate the constitutive elements of a disciplinary misconduct, and provided that this judgment is equivalent to an irrevocable judgment of a criminal court or an irrevocable acquittal order. In any other case, the judgment of the criminal court is taken into account in the disciplinary proceedings, but the disciplinary body may issue a decision different from that of the criminal court.

In this context, the Ombudsman deems it necessary to recall that, despite the dialectical pattern which governs the disciplinary and criminal proceedings, the

162. In more detail, it is noted that: *"important factor for the investigation to be effective, and for verifying whether the authorities were willing to identify and prosecute those responsible, is the speed with which it is conducted. In addition, the outcome of the investigation and the criminal prosecution it leads to, including the sentence imposed, as well as the disciplinary measures taken are of fundamental importance. They are essential if the deterrent effect of the existing judicial system and its role in preventing breaches of the prohibition of ill-treatment is to be preserved".* ECtHR judgment, *NZ v. Greece* 17.01.2012, ECtHR judgment, *Sidiropoulos and Papakostas v. Greece*, 25.01.2018.

163. ECtHR judgment, *MOCANU et al. v. Romania*, 17.09.2014.

164. ECtHR judgment, *Kemal Coskun v. Turkey* 23.03.2017, *Mullet v. France* 13.09.2007.

regulatory relationship between them is determined in terms of autonomy and independence[165], which in turn is dictated by the different purposes pursued by each of the proceedings. Thus, if the general purpose of criminal law is the restoration of social peace, which has been disrupted due to the criminal conduct of the perpetrator, disciplinary law seeks to restore the authority and normal functioning of the Service. Although a criminal and disciplinary offense may be related and correspond at an evidentiary level, disciplinary proceedings have a broader scope than that of a criminal trial and proceedings, as determined by the purpose of the employee or official[166] (**F. 247701, F. 290633, F. 269381**). Besides, the person upon whom disciplinary penalties are imposed is not deplored as a citizen, but as an employee or official, because he or she has violated an obligation in the context of a specific activity[167]. On this account, after all, the legislator makes an indicative and not accurate or exhaustive ex-ante listing of disciplinary misconduct *"since the employee's conduct which contravenes his or her duty and is detrimental to the service can manifest itself in many and varied forms[168]"*.

The disciplinary body's commitment to the judgment delivered in criminal proceedings concerns only the principal facts accepted by the criminal court and does not extend to the acquittal or conviction of the official. This commitment derives from the increased safeguards which the criminal proceedings entail. Furthermore, the very same safeguarding framework demands that the criminal judgment should be irrevocable in order to be binding, according to the provisions of Art. 48 para. 3 of PD 120/2008. Beyond that, the transformation of empirical facts into formal legal concepts and their subsequent characterization as disciplinary offenses belongs to the substantive discretion of the disciplinary body[169]. The legislator of disciplinary law aims at ensuring that disciplinary body's commitment is bound by the reasoning of the criminal judgment concerning the facts of the case as well as by the liability of the person prosecuted, and not by its operative part: *"It is self-evident, of course, that the disciplinary body must make its own judgment as to the disciplinary liability of the person prosecuted, even when bound by an irrevocable criminal judgment, and therefore a decision in which the official's guilt would act as an "automatic" consequence of the criminal conviction*

165. See Art. 48 of PD 120/2008.

166. Papadamakis A., 2016, op. cit. p. 530.

167. Ibid

168. Pikrammenos M., 2013, *"The relationship between disciplinary and criminal proceedings in view of Article 6 of the ECHR"*, in Journal of Administrative Law, iss. 2, p. 252.

169. Piraeus Administrative Court of Appeal 10/2014.

would not be lawful.[170]" This is because the relationship between autonomy and independence that connects disciplinary with criminal proceedings, relies on the coexistence of different rules of law, which regulate the conduct of a certain circle of persons, i.e., that of the civil servants, but under different conditions so as to determine whether the constitutive elements both of the criminal offense, under criminal law, and of the misconduct under disciplinary law, exist.

The broad scope ascribed to the latter over the former is dictated by the purpose of disciplinary law, while it is incorporated in Art. 4 para. 1 of PD 120/2008, which stipulates that the concept of disciplinary offense is realized by breach of the official duty, irrespective of fault (willful misconduct or negligence). In practice, this means that if the real facts of a case cannot be subject to a rule of criminal law due to the absence of the required form or degree of fault this does not affect the subjection of the same facts to a rule of disciplinary law. The same, however, applies even when the facts of the case may not be constituent elements of criminal offence, while, on the contrary may be constituent elements of another disciplinary offense. This is also the case regarding the reasons that lead to the subsequent abrogation of the unjust.

In this light, the suspension of the disciplinary procedure, in accordance with the provisions of Art. 48 para. 3 of PD 120/2008, can only be carried out exceptionally. And as an exception, it should not only be potential but also necessary. The term "necessity" is self-evidently restrictive. This means that there must be serious grounds which dictate, under "necessary" conditions, the suspension of the disciplinary proceedings and which must be clearly, specifically, and thoroughly stated in the reasoning of the relevant decision. The mere existence of criminal proceedings is not sufficient to have a suspensory effect on the disciplinary proceedings, as in such a case, the disciplinary proceedings would be reduced to a mere ancillary to the criminal proceedings. The elimination of the suspensory possibility in cases where the disciplinary misconduct seriously damages the reputation of the police or even worseo when it takes on the dimensions of a public scandal, also argues in the same direction. Corresponding safeguards are provided by the time limitation imposed on the suspension of disciplinary proceedings, with a maximum duration of one year, which usually exceeds the completion of the criminal proceedings, given that the time that elapses between the exercise of criminal prosecution and the issuance of an irrevocable judgment is usually longer.

170. Pikrammenos M, 2013, op. cit. p. 254.

5.2.b. Investigation of racist motive

The shortcomings identified by EMIDIPA regarding the investigation of racist motive in the cases it handled in 2021 focus mostly on the formal statement of the disciplinary body that during the investigation of the individual complaints no racist motive was observed, thus carrying out a prior relevant request for order of disciplinary control. The failure to independently investigate racist motives, which often accompanies such decisions, not only renders their content shallow, but also ends up degrading the contemptuous and unfair nature of discrimination, reducing them to a secondary or procedural issues (**F. 262865, F. 249626, F. 257375, F. 259275, F. 276047, F. 277716**).

The opposition to such occurrences is primarily expressed by the case-law of the ECtHR, which emphasizes the obligation of enhanced and specialized investigation in cases where allegations of police brutality or degrading treatment may coexist with the parameter of racist motive. More specifically, it is dictated that: *"when investigating violent incidents, the authorities have an additional duty to take all reasonable steps to "expose" any racist motive and establish whether national hatred or prejudice played a role. Nonetheless, proving racist motives is often very difficult in practice. The obligation of the authorities shall mean that they will do whatever is reasonable in the specific circumstances to gather evidence, seeking by all practical available means the truth, and that they will provide fully reasoned, objective and impartial decisions, without omitting elements that may constitute an indication of racist motive*[171]*"*.

In fact, in the case of a judgment against our country, the ECtHR stressed that this obligation of the authorities to investigate the existence of a connection between racist perceptions and violent acts and to ensure the fundamental value, which is enshrined in Art. 3 of the ECHR, is part of their procedural obligations, which is dictated in Art. 14 of the ECHR. Therefore, the investigation of racist motives during the disciplinary proceedings is considered inadequate if a comprehensive investigation concerning similar incidents or the existence of any relevant complaints in the service file of those involved, etc. is not carried out[172] (**F. 290633, F. 293294**).

In the light of the above, the Ombudsman recalls that such an investigation must be conducted in all the cases which are included in the scope of discriminatory treatment and are provided in detail in art. 188 para. 1 subparagraph d of L.

171. ECtHR judgment, *Nachova et al. v. Bulgaria*, 26.01.2004.

172. ECtHR judgment, *Mpekos and Koutropoulos v. Greece*, 13.12.2005.

4662/2020, without excluding the component of the victim's beliefs or social status (**F. 270704, F. 282183**).

Similarly, the Ombudsman points out that the establishment of the Greek identity of the victim does not act self-evidently either to remove the racist or homophobic motive, or to compensate for the absence, or inadequacy of the administrative investigation to that end. Additionally, as already stated in an earlier report, the evidence of discriminatory treatment or racist conduct is not limited to the use of offensive or derogatory remarks or expressions.[173] Besides, the concept of harassment, pursuant to Art. 2 case 3 generally corresponds to the unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. At the same time, the Council of Europe's European Commission against Racism and Intolerance clarifies that it is sufficient for the relevant incident to be perceived as racist by the victim or any other person (**F. 271383, F. 270704**).

In the same direction, the ECtHR additionally states that hate crimes do not only refer to acts that are triggered solely by the victim's characteristics, but that their perpetrators may have mixed motives, which are sometimes defined by the circumstances, either to a lesser or to a greater extent, as well as by their prejudiced attitude against the group to which the victim belongs. On these grounds, the Court indicates that the authorities must thoroughly investigate the expression of any racist remarks and, if confirmed, conduct a comprehensive investigation into all the facts in the context of which they were made, in order to expose any possible racist motives. In addition, the overall context of the attack needs to be taken into consideration[174].

It is already becoming apparent that the racist attack does not necessarily have to be combined with the victim's serious physical abuse (**F. 277714, F. 292906**). The lack of thorough investigation and reasoning concerning the a priori decision of police officers to subject to body search, including the removal of underwear solely of a foreign woman who was arrested together with two male compatriot of hers at an OSE train Stations, and instead, the speculation with references to the anatomy of the male body, which, according to the allegations, makes it possible to readily detect whether the person is hiding any objects or not without even conducting a body search, apart from the questions it raises as to the very

173. EMIDIPA Special Report 2020.

174. ECtHR judgment, *ŠKORJANEC v. Croatia* 28.03.2017.

necessity or legitimacy of the body search carried out, gives rise to reasonable suspicion of gender-related discriminatory treatment, which falls under Art. 14 of the ECHR. (**F. 258681**). As the ECtHR further clarifies: *"even when a conduct is not of the required violence or gravity, in order to be considered inhuman and degrading, pursuant to Art. 3 of the ECHR when this is directed towards an individual because they are of a particular ethnic origin/minority, this constitutes a violation of the respect of private life according to Art. 8 of ECHR in the sense of ethnic identity, because negative stereotypes can affect a person's self-esteem and self-confidence as a member of a national community. Hence, in case of complaints regarding harassment with a racist motive, state authorities are obligated to investigate whether there was a similar motive and whether any national hatred or prejudice played a role in the events[175]"*.

In light of the above, the Ombudsman also notes that the content of the Circular - Order under prot. no. 7100/4/3 / 24.05.2006 of the Headquarters of the Hellenic Police, should also be taken into consideration. That order, which was issued in the context of our country's compliance with the aforementioned requirements of the ECtHR, appropriates the much broader term of unethical conduct of police officers, setting the corresponding bar in terms of the damage that may be inflict on the reputation of the police both by the racist conduct itself and by aiding and abetting it. More specifically, it is specified that *"in the context of disciplinary investigation of cases involving unethical conduct by police officers against persons belonging to vulnerable ethnic, religious or social groups or who are foreigners, the investigators must take all reasonable steps to verify and expose the existence of racist motives, either as an independent motive or as an individual one in case of multiple motives"*.

Similarly, the official declarations of the Hellenic Police at a Ministry level, committed to placing particular emphasis on the protection and assistance of all vulnerable groups of the population, though, inter alia, the effective investigation into the existence of racist motives: *"In this direction, systematic efforts are made towards the prevention of the occurrence of incidents of racist violence against vulnerable social groups, the thorough investigation of any complaint and the strict implementation of existing legislation". In addition, it is pointed out "that neither the natural nor the political leadership of the Ministry is willing to tolerate incidents of excessive violence, racism and discrimination against citizens and persons by police officers[176]"*.

175. ECtHR judgment, *R.B v. Hungary*, 12.04.2016.

176. See the reply under prot. no. 7017/4/18435 / 22.04.2015 of the Deputy Minister of Interior and Administrative Reconstruction, Mr. I. Panousis to the Greek Parliament.

5.2.c. Ensuring impartiality

The guarantee of impartiality constitutes one of the basic principles that govern the disciplinary procedure and are established independently on the provisions of the Disciplinary Law of Police Personnel and by analogy, through the explicit reference of Art. 8 para. 1 of PD 120/2008 on the rules and principles of criminal law and criminal procedure. As a prerequisite of the fair trial, which is set by Art. 6 para. 1 of the ECHR, they have an overriding legislative power. The obligation of regular, skillful, accurate, explicit, and objective narration and documentation as to the drawing up and the content of the findings of the disciplinary investigations imposed by the Order - Circular under prot. no. 6004/1/22-κγ΄ / 14.10.2008 of the Chief of the Hellenic Police is in the same direction.

Given the above, it is a firm position of the Ombudsman that the disciplinary control needs to be conducted serving the restoration of the disturbance of public security, that is, the public purpose that the police officers must pursue with their service activity. *"Through procedures that guarantee the objectivity of the factual findings and the impartiality of the evaluations of the competent body*[177]*"*. The same objective is enshrined by the recent amendment, brought about by Art. 1 para. 1 of PD 111/2019, fully adopting the proposal of EMIDIPA, thus ensuring the adequate safety distance between the person conducting the investigation and the one being investigated. More specifically, according to this newly established provision, it is dictated that in cases of preliminary administrative investigations concerning disciplinary misconduct related to torture, other degrading, or brutal treatment, their conduct must be assigned to an officer of a different but equivalent Directorate or Service from the one to which the investigated police officer belongs. The significance of this regulation is associated with the fact that it widely safeguards the hierarchical distance of the disciplinary bodies from the circle of their immediate colleagues, as a condition of accountability and as an assurance of an impartial investigation and fair judgment. The extent of this safeguard is determined both by qualitative criteria, since, until recently, this distance covered only the respective sworn administrative inquiries, as well as by quantitative ones, given that for the vast majority of the relevant complaints preliminary investigations are being carried out.

The compliance with this safety distance in the majority of the cases handled by the Ombudsman in 2021 is a very welcome development and justifies the initi-

177. See Special Report of the Greek Ombudsman, 2004, *Disciplinary Administrative Investigation of Complaints against Police Officers*, p. 7.

ative of the legislator. As a matter of fact, the provision was only violated in six cases, in five of which in a direct and evident manner, as the disciplinary investigation of the respective cases was assigned to a police officer of the same police department as the investigated police officers (**F. 269176, F. 254289, F. 246381, F. 262867, F. 291505**). In the sixth case, although the required distance was formally ensured by assigning the disciplinary investigation to a police officer of another, geographically adjacent police department, it was practically extinguished at the most critical stage, due to the fact that a colleague of the investigated police officers who served in the same department as them was ordered to take their statements/apologies as well as the affidavits (**F. 282183**).

Despite the fact that the extremely small number of cases in which the required distance has not been secured constitutes a significant step forward in ensuring guarantees of impartiality and transparency, the Ombudsman would like to stress that, in combination with the whole range of issues that remain and affect both the effective conduct of the disciplinary investigation and the obligation of full and comprehensive reasoning, there is a risk involved in the consolidation and satisfaction of the formal criteria against, or perhaps to the detriment of, the substantive ones. Such an eventuality would not only undermine the objectivity and completeness of the administrative investigation but would also deprive the disciplinary procedure of seeking the substantive truth, by adhering to formalistic or stereotypical patterns.

5.2.d. Failure to investigate reported incidents

The administrative investigation must have as its object the reported incidents, which, when thoroughly investigated, will lead to the ascertainment of the circumstances, the identification of the perpetrators and the attribution of liability. According to the ECtHR, the effectiveness of an investigation is determined not by the specific result, but also by its ability to deliver results[178]. This is also dictated by the provisions of Articles 24 and 26 of the PD 120/2008, whilst ensuring the possibility of extending the disciplinary control to other disciplinary offenses which may arise either from the outset, upon issuance of the initial order, or with the issuance of a subsequent order, so as to supplement or convert the disciplinary control conducted.

Nonetheless, the Mechanism has pointed out in several cases that not all the

178. ECtHR judgments *Konstantinopoulos v. Greece*, 22.11.2018, and *Makaratzis v. Greece*, 20.12.2004.

complaints of the complainants are investigated during the conduct of the administrative investigation, thus resulting in the relevant findings reports being presented as deficient and, hence, unsubstantiated.

In a case involving a complaint of violence and sexual harassment against female detainees reported in an Article published online, which was the subject of an administrative investigation, there was also a complaint regarding the brutal abuse of a male detainee. That complaint was the most serious incident reported in the relevant Article, entailing a very heavy disciplinary liability pursuant to the PD 120/2008, as well as criminal turpitude (Art. 137A PC), and therefore should have been adequately investigated. However, no relevant mention to the specific incident of abuse was made in the findings report, no indication was there in the PDE file that it had been investigated and no justification for this omission either (**F. 273572**).

Similar omissions were observed in other serious cases handled by the Mechanism in 2021. In this context, the Independent Authority requested that the investigation be supplemented by taking statements from apprehended citizens and subjecting them to clarifying questions regarding their complaints as to their arrest and the conditions of their detention, which were revealed from press or online reports but were not mentioned in the Findings Report (**F. 289235**), while in another case, the Authority observed that the process principally focused on investigating the complaints regarding use of force against only one citizen, which stood in contrast to the wider content of the disciplinary order and while there was a plethora of complaints and related press or online reports mentioning further use of force against more citizens, mass prosecutions and arrests, as well as long hours of detainment of citizens in GADA (**F. 295300**). Finally, the National Mechanism requested the investigation of all the complaints, as they emerged from the press or online reports attached to the order for the conduct of a PDE, some of which were not mentioned or even assessed in the Findings Report (**F. 288914**).

5.2.e. Obligation to state reasons and misinterpretations of the legal framework

All the observations that have already been made and that constitute the irregularities and shortcomings regarding both the evidence and the disciplinary procedure itself, deprive the administrative investigation of its due documentation and efficiency, thereby rendering its content unfounded. The principle of moral proof, which also applies in disciplinary proceedings, pursuant to the provisions of Art. 8 of PD 120/2008 and art. 177 of the CCP, imposes the obligation of full and es-

pecially comprehensive reasoning. This means that the reasoning of disciplinary reports and disciplinary decisions cannot be formal, given that the objective is to investigate the substantive correctness of the relevant decisions (**F. 294870, F. 295453, F. 299498**). In this context, the Ombudsman has repeatedly pointed out that the formal evaluation and selective utilization of evidence constitute forms of irregularity, as the freedom to evaluate evidence reaches its jurisprudential limit in the requirement of reasoning, so that the judicial judgment is not reduced to "innermost" convictions (conviction intime)[179].

Similarly, the Ombudsman emphasizes that shortcomings and errors concerning the completeness of the disciplinary control and the required reasoning of the disciplinary report are not remedied by assigning the case to the EMIDIPA, in order to ensure its completion by conducting its own investigation (**F. 272697**). The role of the Ombudsman as EMIDIPA is neither to assist nor to replace the competent services in conducting an internal administrative control, as explicitly reflected in Art. 188 para. 10 L 4662/2020, as such a development would circumvent the principle of the legal judge. Its institutional mission is to contribute, inter alia, to maintaining public confidence in the police, that is, the confidence that the general public needs to have in those who are specifically empowered by the state to safeguard freedoms and rights that are illegally violated, and this mission is implemented through its institutional role as a guarantor of legality. To this end, as stated in the Ombudsman's previous special report: *"the assignment to the Ombudsman of the special competence for investigating cases of arbitrariness by security forces and penitentiary employees stresses the importance of enhancing the mechanisms of accountability and transparency when investigating every incident*[180]*"*. In this context, the use of the legislative instruments and options provided to the Independent Authority for the fulfillment of its own essential and effective operation is at its discretion and is regulated in terms of constitutional independence.

In the same vein, the role of EMIDIPA is not in line with the legal defense of the victims and, therefore, while performing its duties, it does not discriminate against the police and much more does not circumvent the principles of sound administration. On the contrary, the observance of these principles summarizes the institutional status as well as the jurisprudential purpose of the Ombudsman (**F.**

179. Special Report of the Greek Ombudsman, 2004, *Disciplinary - Administrative Investigation of Complaints against Police Officers* https://old.synigoros.gr/resources/docs/astinomikoi.pdf.

180. EMIDIPA Special Report *2020*, p. 9.

245785). Similarly, the Mechanism does not make complaints. The use of such formalities in a disciplinary report does not reflect the applicable provisions of the legislation. On the contrary, the invocation of such expressions and allegations misrepresents its institutional mission to control the procedure followed by the competent disciplinary bodies and to ensure the *"fair and effective investigation of complaints regarding arbitrary incidents*[181]*"*, in order to avoid the future absence of effective investigation of cases of arbitrariness and thus the violation of the procedural aspect of the rights, thereby leading to a possible judgment against the Country by the ECtHR. (**F. 241553**).

In addition, the Ombudsman clarifies that the obligation of full and especially comprehensive reasoning and the positive obligation of the Country, through its respective competent bodies, to conduct an effective formal investigation in cases of complaints regarding ill-treatment, especially of detainees or persons who are under police control in general, so that it is not held accountable for violation of Art. 3 of the ECHR, is mistakenly juxtaposed with the presumption of innocence and the resulting principle of moral proof (**F. 254608**). This mistaken juxtaposition is mainly related to the prioritization of self-centered safeguards against state obligations. In this light, the case-law of the ECtHR, when investigating the observance of the contractual obligations of each country, both the negative and positive ones, comes to the conclusion that in cases of complaints regarding the ill-treatment of detainees, precisely due to the power relation created by the restriction of personal freedom, the competent national authorities must conduct a thorough investigation in order to provide satisfactory and convincing explanations as to the cause of the reported physical injury, given that they bear responsibility for their physical integrity and health, (**F. 269138, F. 262867, F. 290225, F. 293292, F. 301006**), but also as to the lawfulness of the transfer of citizens to the police stations or their arrest, in the context of which the use of force is very common (**F. 247701, F. 289235, F. 295300, F. 306586**), and as to the necessity of the force used, based on the principle of necessity and proportionality (**F. 269138, F. 278405, F. 291505, F. 292439, F. 293292, F. 293294, F. 301006**). In that respect, the national authorities bear the burden of proof regarding the completeness, documentation and effectiveness of the investigation conducted, and not as regards the establishment of the alleged perpetrator's guilt[182].

In any case, however, the ECtHR has ruled that *"In the case of an arguable al-*

181. See Explanatory Memorandum Art. 188 L 4662/2020.

182. ECtHR judgment *Mpekos and Koutropoulos v. Greece*, 13.12.2005.

legation of a breach of Article 3, Article 13 calls for an effective mechanism for establishing the liability of State officials or bodies for acts or omissions involving a breach of the victims' rights under the Convention [...] In particular, if the allegations concern torture or serious ill-treatment by State agents, this mechanism must consist, at a minimum, of a thorough and effective investigation capable of leading to the identification and punishment of those responsible. [...]This investigation must be based on a standard comparable to the one used by the Court in assessing complaints under Article 3.[...] The same goes for the ensuing judicial proceedings, should the case come to trial. The national authorities, while bound by the presumption of innocence and by the terms in which domestic law is couched. [...]must nevertheless review the acts alleged to amount to a breach of Article 3 of the Convention in the light of the principles which lie at the heart of the Court's analysis of complaints under this provision[183]".

The principle of moral proof must be addressed in a similar manner. As theory has shown, abandoning the system of legal evidence and adhering to the moral evidence does not mean diverting to a regime of potential subjective arbitrariness on the part of the criminal or disciplinary judge. On the contrary, it means reverting to the original concept of proof, that is, safeguarding that the evidentiary effort is governed by contemplation and explanation of the result and, consequently, by substantive rather than formal reasoning, as in the system of legal evidence: *"Therefore, the main difference between the judge who applies the system of legal evidence and the judge who applies the system of moral proof lies in the fact that the latter must independently seek and find the applicable rules of evidence imposed by the "general laws of thought, experience and knowledge of human beings". For the selection and implementation of these rules, nothing can alleviate the existing obligation of the judge of moral proof, except the conscience of the fulfillment of the duty to conduct a proper examination, for which he is accountable.[184]"*

The required reasoning in this case is covered by the general obligation of justification of the judgments of the criminal court, as reflected in Art. 139 of the CCP and which, by virtue of Art. 8 of PD 120/2008, also extends to disciplinary law. The combination of these provisions dictates that disciplinary reports and any disciplinary decisions pertinent to them must be reasoned specifically and thoroughly, emphasizing the obligation of the body conducting the disciplinary

183. ECtHR judgment, *Ivan Vasilev. v. Bulgaria*, 12.04.2007.

184. Androulakis N., 2014, "Criminal evidence as reasoning and the completion of it", in *Nomiko Vima*, iss. 62, p. 1095.

control to state *"the basis, manner and reasons of its conviction*[185]*"*. This points to a clear rationale, appropriate reflection on evidence that leads to a comprehensible explanation of the final decision of the disciplinary body and therefore proof[186]. Without reasoning there can be no proof[187]. Therefore, in the system of moral proof, the criminal judge and, by analogy, the competent disciplinary body, are not free to decide on the basis of their beliefs or feelings, but according to specific rules, the observance of which is subject to critical scrutiny. The absence of specific and thorough reasoning, which is also laid down in the Constitution (Art. 93 para. 3) is the principal subject of the appellate review by the Court of Cassation.

Respectively, the principle of free evaluation of evidence, as expressed in Art. 177 of the CCP and consequently as inclusive of the system of moral proof does not imply that the evaluation of evidence is left to the arbitrary discretion of the criminal judge or competent disciplinary body. On the contrary, it means that, in principle, any evidence can contribute to the forming of their conviction during the dialectical search for substantial truth without restriction (Art. 179 CCP), without evaluation hierarchy (Art. 178 CCP) and without predetermined interpretations. The lack of hierarchy of the evidentiary value and the binding nature of evidence obliges the disciplinary mechanism not to be limited to the collection of certain evidence only, but to take all the necessary steps to achieve the completeness of the relevant disciplinary case file.

5.2.f. Violation of the obligation to suspend a decision until the Ombudsman's report of findings

It has already been mentioned that the purpose of the Ombudsman's operation as EMIDIPA constitutes that of the guarantor of completeness and effectiveness of disciplinary control. A fundamental prerequisite for the fulfillment of this purpose is the suspension of the issuance of decisions by the competent disciplinary bodies until a final findings report is issued by the Authority. Otherwise, the operation of EMIDIPA would be effectively nullified due to the ne bis in idem principle, which also applies to disciplinary law. For this reason, the legislator has armed the Mechanism with a relevant provision from the beginning of its operation[188].

185. Ibid

186. Mitsopoulos G., 2005, *Issues of general theory and logic of law*, Ant. N. Sakkoulas Publications, p. 186.

187. Androulakis N., 2017, *Seeking and finding the truth in criminal proceedings*, P. N. Sakkoulas.

188. By virtue of Article 56 of L. 4443/2016 the specific competence for investigating inci-

To that end, the issuance of a disciplinary decision without prior assessment of the completeness of the internal administrative examination by the Authority and its compliance or justified deviation from the recommendations of the Authority, constitutes non-observance of the essential procedural requirements, thereby establishing grounds for annulment of the decision in question. In addition, the de facto circumvention of the National Mechanism for the Investigation of Arbitrary Incidents simultaneously negates the very purpose of the legislator, as stated in the explanatory statements of the relevant draft laws[189] which is to establish an external and independent mechanism, parallel to the disciplinary bodies, for investigating arbitrary incidents. In fact, the establishment and further strengthening of the National Mechanism was proposed by the bodies of the Council of Europe to serve as an institutional safeguard of the disciplinary procedure and the reliability of the administrative inquiries, so as to ensure the necessary transparency and accountability in the action of the security forces, including the Hellenic Police.

The Ombudsman has repeatedly noted that this violation of the law is not nullified by invoking no. 1647/20/429314 / 26.02.2020 Order of the Headquarters of the Hellenic Police due to the primacy of the law, in this case L. 4662/2020, against service orders or circular notices.

Nevertheless, this approach is still followed, as it has been observed in some of the cases handled by the Mechanism during 2021 (**F. 245785, F. 254608, F. 260309, F. 246381**).

dents of arbitrariness was assigned to the Ombudsman, by amendment of Article 1 of L. 3938/2011. Para. 4 of Article 1 provided for the suspension of the decision of the disciplinary bodies until the issuance of a report of findings by the Ombudsman.

189. Art. 56-57 of L. 4443/2016 combined with Art. 188 L 4662/2020.

6

EXECUTION OF ECtHR JUDGMENTS

6. Execution of ECtHR judgments

The role of the Ombudsman as National Mechanism for the Investigation of Arbitrary Incidents, involves a versatile action, functioning at the same time as a national mechanism for the execution of judgments of the European Court of Human Rights (ECtHR), in which shortcomings in disciplinary procedures or new evidence that was not assessed in the disciplinary investigation are identified. By extension of the latter function, the Ombudsman constitutes a decision-making body, deciding on whether the competent disciplinary bodies shall review a case so as to exercise or supplement the disciplinary proceedings and to impose the appropriate disciplinary penalty, regardless of the initial hearing of the case. These are individual measures of compliance in the specific field only, namely that of disciplinary investigation of the specific conduct judged by the Court, while any general measures of compliance with the ECtHR decision fall under the decisive competence of the Government.

In addition, a component of the aforementioned competence of EMIDIPA is the possibility of bending the principle of non-prosecution for a second time for the same disciplinary misconduct (ne bis in idem), in cases of new evidence or facts revealed afterwards, as well as in the event that there was a substantial defect in the disciplinary procedure. In the same context it is explicitly dictated that the legal description of the act under investigation as held by the ECtHR, is binding for the Administration, for reasons of uniform application of case-law in the legal order, which coincides with an earlier proposal made by the Ombudsman[190].

It is reminded that in the case of enforcement of ECtHR judgments, the Ombudsman cannot act ex officio, unlike in cases of complaints about arbitrary incidents concerning the same law. In order for the Ombudsman's competence to decide on the resumption of the disciplinary procedure to be triggered, the Administration, specifically the Personnel Directorates of the relevant bodies, must forward the conviction judgment of the ECtHR and the relevant disciplinary file to the Ombudsman, highlighting the specific suspension periods of the statute of limitations.

As concerns the functionality of this action of the Ombudsman, the recent deci-

190. For the Ombudsman's proposals based on the implementation of the relevant provision of L. 4443/2016 on the Zontul v. Greece judgments and all the Makaratzis Group judgments, see the EMIDIPA special report for the years 2017 - 2018, p. 46 et seq. and for the judgment on *Sarwari et al. v. Greece* see EMIDIPA special report for the year 2019, p. 122 et seq.

sion of the Committee of Ministers of the Council of Europe, on 14 - 16.09.2021, which gave a positive evaluation of the role of EMIDIPA towards strengthening disciplinary investigations in cases of abuse by members of the security forces, was essential. In this light, it also decided to end the enhanced supervision regime that was enforced in a series of important judgments of the Court, all of which constituted the "Makaratzis group" file.

In particular, among other general compliance measures with the case-law of the European Court of Human Rights taken by the Greek state, the Committee explicitly referred to the amendment of the definition of torture in the Penal Code in 2020, as well as to that of the disciplinary law of police personnel in 2019, which were both proposed by the Ombudsman. The Committee also highlighted the transparency brought about by the operation of the National Mechanism since June 2017, apparently referring to the accountability process which is served through the annual special reports and detailed statistics. At the same time, it pointed out the quality improvement of the Administration's internal investigations, which the Independent Authority monitors through its referral findings to further supplement the disciplinary investigations with specific harmonization proposals, which in turn pertain to the criteria of an effective administrative investigation set by the ECtHR case-law.

In the same context, the Committee welcomed the shielding of EMIDIPA with legal investigative instruments, without, however, omitting the need for additional reinforcement of the Mechanism in terms of logistical and human resources and urging the Administration to follow its recommendations as to the elimination and normalization of systemic deficiencies of administrative investigations.

During the year 2021, one (1) judgment of the ECtHR, the *Fountas v. Greece* judgment of 03.10.2019 (appeal 50283/13), was forwarded to the National Mechanism, which formed no. **F. 295729** case of the Authority. In the same year, the Authority also received the report on the review of the disciplinary procedure which it had requested concerning the case **F. 273608**, which was related to the ECtHR judgment Konstantinopoulos et al. v. Greece of 22.11.2018 (appeals no. 29543/15, 30984/15) and which was extensively discussed in the previous Special Report of 2020.

A (1) The case F. 295729 concerned the incident of fatal injury of one of the two passengers of a private car during their armed clash with two police officers in the evening hours of 9th March 2010 in Palaio Faliro. The complainant, the father of the deceased, argued that the investigation that was conducted into the death of his son was ineffective. The administrative inquiry under oath concluded after its completion that no conduct deviating from the law or or-

der of the two investigated police officers was observed, thus proposing that the case be archived. Similarly, the relevant decision of the General Police Director of Attica concluded that the investigated police officers acted in legitimate defense, and therefore were not subject to disciplinary liability for the incident. Subsequently, the criminal investigation of the case was completed with the issuance of an order by the Public Prosecutor of the Court of Appeal, which dismissed the appeal of the father of the deceased against a previous order of the Public Prosecutor of the Misdemeanors Court of Athens, who had dismissed an earlier complaint of the fathers requesting the criminal prosecution against any perpetrator and instigator of his son's death.

The ECtHR ruled that the investigation conducted into the death of the complainant's son had been ineffective as it lacked a substantial safeguard of the involvement of the deceased person's family in it. Consequently, the Court concluded that there had been a violation of Article 2 of the Convention in its procedural part, as a result of the complainant's inadequate involvement in the investigation that was carried out into his son's death.

Regarding the disciplinary procedure in particular, the Court maintained that it was effective as to the promptness with which it was conducted, the safeguards of independence and impartiality as well as the adequacy and appropriateness of the evidence used to record the principal facts and identify those involved in the incident.

Contrastingly, regarding the criterion of access of the victim's relatives to the documents of the disciplinary procedure, which is deemed necessary to safeguard their legal interests and for reasons of adequate public scrutiny of the investigation[191], the Court ruled that it was not effectively ensured, as the period of four (4) years that elapsed until his fulfillment was excessively long. In addition, the Court emphasized that the necessity for such access is increased for the purpose of observance and implementation of the general principle of equality of arms, noting that: *"The fact that these documents were not provided to the complainant in time is of particular importance given that the Public Prosecutor explicitly took into account the findings of the sworn administrative inquiry, as is apparent from the fact that he refers to them. This made the complainant's access to the documents even more urgent, in order to safeguard his legitimate interests."*

In the same direction, concerning the criterion of information and wider access of the victim's relatives to the administrative investigation, the Court noted that

191. ECtHR judgment, *Hugh Jordan v. United Kingdom*, 04.05.2001.

in this particular case, their untimely information regarding the death of their son resulted in deprivation of their rights, namely of the right to appoint a technical advisor, if they so wished: *"These circumstances lead to the conclusion that the competent authorities did not ensure that the investigation had the required level of public scrutiny or safeguarded the interests of the closest relatives in the context of the proceedings".*

(2) The Ombudsman was initially notified of this ECtHR judgment by the LCS, followed, in accordance with the law, by the forwarding of the ECtHR decision and the file of the relevant administrative investigation by the Hellenic Police Personnel Directorate. The Independent Authority, in the context of its competence as EMIDIPA, decided that there was no additional scope or reason for a new disciplinary investigation into the case, given that the procedural omissions that were observed as to the procedure already conducted could not be remedied retrospectively. However, taking into account the specific findings and the general case-law of the ECtHR, as well as the domestic law, and in order to avoid future judgments of the Court against the Country for the same issues, the Authority pointed out the following.

Both in this judgment and in its established case-law, the Court has set a number of criteria for the effectiveness of judicial and disciplinary investigations, the need to comply with which pertains to the smooth operation and validity of the rule of law, dispelling suspicions of concealment or impartiality[192]. Especially in cases of violation of Art. 2 of the ECHR, the Court dictates that the compliance with these criteria must be particularly rigorous: *"In the event that a death has been inflicted at the hands of a State agent under suspicious circumstances, particularly stringent scrutiny must be applied by the relevant domestic authorities to the ensuing investigation[193]"*. The justification provided for the need for rigorous implementation of these criteria is dictated by the fact that *"what is at stake here is nothing less than public confidence in the state's monopoly on the use of force[194]"*.

Among these criteria - independence, adequacy, and promptness of disciplinary procedure- the Court generally provides for the involvement of relatives in the administrative inquiry and in particular their access to the relevant documents. In fact, the contribution of these criteria in cases of violations of Art. 2 of the ECHR, must be cumulative and, therefore, their separate or partial implementa-

192. ECtHR judgment, *Opuz v. Turkey*, 09.06.2009

193. ECtHR judgment, *Enukidze and Girgiliani v. Georgia*, 26.04.2011.

194. ECtHR judgment, *Hugh Jordan v. United Kingdom*, 04.05.2001.

tion is not enough. It is specifically stated that: *'The Court considers it necessary to point out that observance of the procedural part of Article 2 of the Convention is assessed on the basis of a number of key parameters: the adequacy of the investigative measures, the promptness of the investigation, the participation of the relatives of the deceased in it and the independence of the investigation. These parameters are interrelated and taken separately, do not amount to an end in itself, as is the case with the requirement of independence in the case of Article 6. They are criteria which, taken jointly, enable the degree of effectiveness of the investigation to be assessed. It is in relation to this purpose of an effective investigation that any issues, including that of independence, must be assessed*[195]*...".*

In this vein, the Court adds that: *"There must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the next of kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interest*[196]*"*. In other words, the ECtHR dictates that the access of the victim's relatives to the documents of the disciplinary investigation is neither automatic nor absolute, but obeys to the principle of proportionality, as: *"disclosure or publication of police reports and investigative materials may involve sensitive issues with possible prejudicial effects on private individuals or other investigations. Therefore, this cannot be regarded as an automatic requirement under Article 2. Consequently, the requisite access to the public or the victim's relatives may be provided for at other stages of the procedure*[197]*"*.

In this context, the functionality of the principle of proportionality is twofold: on the one hand, it ensures that the investigating authorities are not obliged to satisfy every request for access to the disciplinary procedure made by a relative of the victim[198], but only those which are necessary to safeguard his or her legitimate interests, and on the other hand, the satisfaction of these requests must be done at such a stage of the investigation that guarantees that there are no questions of legality regarding the protection of sensitive personal data, nor does it jeopardize the course of the investigation.

Based on the provisions 8, 24 and 26 of the PD 120/2008 of the disciplinary law

195. ECtHR judgment, *S.F v. Switzerland*, 30.06.2020.

196. Ibid

197. ECtHR judgment, *Giuliani and Caggio v. Italy*, 24.05.2011.

198. ECtHR judgment, *Ramsahai et al. v. the Netherlands*, 15.05.2007.

of police personnel, as far as the disciplinary procedure is concerned, the proportional application of the fundamental principles of Criminal Procedure is provided for and it is also established that it is governed by the principle of secrecy. The contribution of this principle is also required, according to Art. 241 of the CCP, during the pre-trial stage of the criminal proceedings, after the completion of which it is removed, thus allowing the complainant access to the criminal case file, pursuant to the provisions of Articles 107 and 100 of the CCP. Art. 29 para. 1 of 120/2008 delimits the end of the administrative inquiries, which coincides with the drafting of a findings report by the investigator conducting the inquiry. The drafting of the findings report, therefore, signals the removal of the secrecy of the disciplinary procedure and, consequently, the stage of the investigation at which, in accordance with the above, the relatives of the deceased can access the disciplinary case file, and specifically, as further explained by Art. 30 of the CCP, in the documents, the means of evidence and the findings report.

Article 5 of the Code of Administrative Proceedings defines in detail both the necessary conditions and the way in which the criterion of access of the relatives of the deceased to the disciplinary case is ensured, through which the constitutional right to information of Art. 5A of the Constitution is exercised. Among others, para. 4 of art. 5 of the Code of Administrative Proceedings stipulates that this constitutional right is exercised through the provision of copies of administrative documents or private documents which are kept by the Administration, and which were taken into account and formed the basis and reasoning for administrative acts. Para. 3 of the same Article dictates that this right does not exist in cases where the document concerns the privacy or family life or violates the secrecy of special provisions, while the possibility of refusal to provide such copies can be granted if the document refers to discussions of the Council of Ministers or may substantially impede the investigation of judicial, administrative, police or military authorities in relation to the commission of a crime or administrative offense. It is therefore apparent that the right to information, as exercised through the provision of copies, is subject to absolute prohibition if the content of the document pertains to private or family life. This is because the protection thereof constitutes the content of another constitutional right, as reflected in Art. 9 and 9A of the Constitution and is further specified in the provisions on sensitive personal data of L. 4624/2019, as well as in Art. 8 of the ECHR.

At this point, two observations need to be made. The former has to do with the fact that there is no hierarchical order between the above rights and therefore the provision of copies does not constitute a “derogation” from the constitutionally guaranteed right to protection of private life, but rather is related to the securing and the very exercise of the constitutionally guaranteed right to information.

The same also applies in reverse, where the absolute prohibition or conditional provision of copies in the cases dictated by law and already outlined herein, is a safeguard of the right to protection of private and family life.

The latter issue that needs to be raised is that the disciplinary case file, in accordance with the aforementioned provisions of the PD 120/2008, constitutes the result with which the disciplinary investigation is completed. The objective of the disciplinary investigation, whether it be a PDE or an EDE, is to establish whether a disciplinary misconduct has been committed or not, pursuant to the respective provisions of Articles 24 and 26 of the PD 120/2008. The general concept of disciplinary misconduct, as reflected in para. 1 of art. 4 of PD 120/2008, is defined as any punishable and imputable breach of official duty (action or omission). Therefore, the police officer who is subject to disciplinary investigation is neither deplored as an individual, nor as a citizen, but as a civil servant, because he has violated an obligation in the context of a specific activity[199]. Consequently, the provision of copies of the disciplinary case file cannot automatically constitute a "violation of the privacy of an individual", since the internal administrative investigation controls the official conduct of the investigated police officer in question and, consequently, the lawful exercise of public authority. As the Authority has already commented: *"the purpose of police disciplinary law is to restore the disturbance of public security, that is, the public purpose that the police officers have to pursue with their service activity..."*[200]. The same view is supported by the Legal Council of the State, as in its opinion No. 372/2009 it clarifies that: *"... the disciplinary procedure is obligatorily initiated by the administration in the cases provided by law and aims at the smooth operation of services, the observance of the principle of legality and the defense of public interest".*

Insofar as disciplinary control obeys reasons of public interest, access to the relevant documents, besides safeguarding the individual right to information, constitutes an additional safeguard of public interest. This is reflected in the ensurement of the general principle of transparency in administrative action and participation of citizens in the administrative procedure, which in turn ensures the maintenance of public confidence in the police, that is, the confidence that the general public needs to have in those who are specifically empowered by the state to safeguard freedoms and rights that are illegally violated. In this context, the right to peruse the documents by having access to them, which is specified in Art.

199. Papadamakis A., 2016, op.cit., p. 530.

200. See Special Report of the Greek Ombudsman, 2004, *Disciplinary Administrative Investigation of Complaints against Police Officers*, p. 7.

5 of the Code of Administrative Proceedings, does not depend on the invocation of a legitimate interest but reasonable interest is sufficient[201], as confirmed by the case-law of the CoS[202]. Therefore, the narrow interpretation of the provision of Art. 23 para. 4 of PD 120/2008, which dictates that "whoever files a complaint against a police officer is entitled to be informed of the result of their complaint upon request", allowing them to be made aware only of the type of disciplinary investigation ordered, the establishment of any disciplinary liability and the imposition disciplinary penalty or lack thereof, excluding the content of the investigation, as it is considered confidential, pursuant to Art. 54 para. 8 of PD 120/2008, raises a number of issues. In essence it constitutes an implicit prohibition and, in any case, an unjustified reduction of the individual right to information. Some of these issues are the reasonable objections to the legality, the possibility of future convictions against the Country and the oxymoron which is created by prohibiting the police authorities' access to disciplinary documents and allowing it through the prosecutor's office, in cases of concurrent criminal investigation of the case so that the disciplinary case file is contained in the criminal one. It is also worth adding that the Greek Justice through no. 402/2000 Decision of the Administrative Court of First Instance of Athens, adopting the judgments of the ECtHR in this decision, recognized the liability of the State for compensation under Article 105 of the Introductory Law to the Civil Code

In the light of the above and for the sake of compliance with the interpretative precedent of the case, in the framework of implementation of Art. 46 of the ECHR, in order to prevent similar violations in the future and therefore to avoid future judgments against the country, in cases of complaints regarding violation of Art. 2 and Art. 3 of the ECHR, due to the conclusive nature of the latter, the parameter of the violence associated with it and because, as noted by the Court itself "by undermining human dignity, the very essence of the Convention is affected[203]", EMIDIPA considers institutional intervention necessary, in order to ensure the effective access of either the relatives of the deceased or the victims themselves to the documents of the disciplinary case file in the aforementioned cases, in

201. Pursuant to no. 1214/2000 decision of the 4th Chamber of the Council of State *"As a reasonable interest under Art. 16 L 1599/86 is not to be perceived the interest of every citizen for the proper exercise of the general duties of the Service and the observance of the laws, but that which objectively arises from the existence of a specific, personal legal relationship, connected with the content of the administrative data to which access is requested".*

202. see CoS 841/1997, 3130/2000.

203. ECtHR judgment, *Akin v. Turkey*, 17.11.2020.

accordance with the conditions that apply to the protection of personal data and are provided for by L. 4624/2019. In this regard, it is recalled that the Personal Data Protection Authority has repeatedly ruled that disciplinary proceedings and sanctions do not constitute sensitive personal data, and therefore, the provision of copies is allowed even without the subject's consent, provided that the statutory requirements are satisfied[204].

In such a context, EMIDIPA proposed either the issuance of a relevant circular order by the Hellenic Police or in case its issuance is prevented by no. 247/2015 Opinion of the LCS - which, as is apparent from the LCS website, has been accepted by the competent Minister and pursuant to Art. 9 para. 8 of L 4831/2021 has a binding nature for the Administration- the revocation of the act of acceptance. Alternatively, for reasons of legal certainty, it has been proposed that a corresponding provision be added to the provisions of PD 120/2008 on the disciplinary law of police personnel.

B (1) The case F. 273608 concerned a complaint by detainees at the Grevena Penitentiary Facility for torture and abuse they suffered during an unannounced inspection of their cells on 13.04.2013, carried out by penitentiary officials and police officers of the special anti-terrorist unit (EKAM). In particular, in their complaint they alleged that they were subjected to use of an electric discharge apparatus, i.e., tasers, beatings and verbal abuse, they were forced to kneel and crawl naked to the gym of the sports hall of the penitentiary facility, where they stood facing the wall.

Taking into consideration the relevant judgment of the ECtHR, which ruled that there was the substantial and procedural violation of Art. 3 of ECHR, as well as the disciplinary case file, the Ombudsman decided on the re-investigation of the case for a number of reasons, which were set out in detail in the previous EMIDIPA Special Report for the year 2020. In this context, the Hellenic Police pulled the case from the archive and ordered the supplementation of the PDE which had already been conducted.

Regarding the supplementation of the disciplinary control, the Ombudsman referred to the lack of audiovisual material due to its destruction, the search for which was one of the recommendations of the Authority so as to supplement the investigation, commenting on the inadequate compensation of the failure to safeguard the material. More specifically, the absence or even the partial exist-

204. See Decision 57/2009 PDPA, Decision 95/2016 PDPA.

ence of video footage, due to its deletion, imposed by the relatively short deadline of 30 days, has been judged by the ECtHR[205] to have deprived the national courts of the possibility of further findings in the formation of a judicial judgment. In addition, the fact that the video footage was requested by the competent Prosecutor, after the expiry of the deadline, as in the present case, led the Court to the conclusion that the investigation lacked due diligence and promptness, which constitutes a violation of the procedural par of Article 3 of ECHR. In this vein, the Court has ruled that in cases of failure to safeguard video footage, in order to ensure the completeness and effectiveness of the investigation, it is necessary to compensate for it using other investigative measures, such as in particular the investigation of all police officers involved in a police operation and not only the ones in charge, as well as the paramedical personnel who immediately assisted the injured[206].

However, the most significant defect of the supplemented disciplinary control is related to the fact that, instead of its being limited by the content of the specific ECtHR judgment, due to the increased binding that the latter produces, it is directed towards the substantive assessment of its content and the attempt to deconstruct it, due to erroneous assessments or misunderstandings on the part of the Court. Not only does such an approach not seek to substantially supplement the recorded deficiencies of the disciplinary investigation, but it also leads to the oxymoron that the Country has been convicted by the ECtHR, but no disciplinary liability arises. After all, this is the core of the relevant ECtHR judgment, which concluded that, although it was established by the findings of the forensic examination, in combination with the testimonies that the 11 complainants were abused by police forces using tasers, thus violating the substantive aspect of Article 3 of the ECHR, there were no consequences for the investigated police officers, thereby rendering the disciplinary procedure deficient and violating the procedural part of the aforementioned Article.

This seems to be reflected in the relevant LCS document, which extensively lists the obligations of our Country for its full compliance with the ECtHR judgments. The same document makes specific reference to the fact that the Committee of Ministers of the Council of Europe included this particular case in the group of judgments against Greece, concerning the use of force by law enforcement agencies ("Makaratzis" group of cases), and outlines what the Committee of Ministers

205. ECtHR judgment, *PÓSA v. Hungary*, 07.07.2020.

206. ECtHR judgment, *HENTSCHELAND STARK v. Germany* 09.11.2017.

examined in 1411th Meeting on the progress of compliance with the judgments on these specific cases. In fact, this is one of the three cases, for which the continuation of the supervision was ruled, due to which a new sub-file of cases entitled "Sidiropoulos - Papakostas" was compiled. Nevertheless, the content of the relevant document regarding the obligations for compliance with the specific ECtHR judgment, does not seem to have been taken into account by the supplementary PDE.

In this context, the National Mechanism considered it necessary to recall that, in the judgment against our country of 25.04.2018 in the case of Sidiropoulos and Papakostas[207], which constitutes part of the aforementioned sub-file, the ECtHR once again warned that *"the criminal and disciplinary system [...] had proved to be seriously lacking in rigour and incapable of having a deterrent effect to ensure the effective prevention of illegal acts"* given the fact that *"The outcome of the proceedings against the police officer had not provided appropriate redress for the breach of the right enshrined in Article 3 of the Convention"*.

(2) Secondly, the National Mechanism deemed it appropriate to elaborate on the overriding legislative commitment brought about by the ECtHR judgments for the Country. In accordance with Article 46§1 of ECHR - which pursuant to Article 28§1 of the Constitution since its ratification[208], constitutes an integral part of Greek domestic law and prevails over any other contrary provision of law: *"The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties"*. The selection of compliance measures in a judgment falls upon the State, albeit without pointing to absolute discretion, as the nature of these measures is mostly indirectly dictated by the reasoning of the convicting ECtHR judgment, namely from the nature of the violation identified through it. Since the remedy of the violation concerns a specific complainant and a specific case that was judged by the ECtHR, it involves compliance with the substantive res judicata of the ECtHR judgment[209]. There is no stricto sensu mechanism of enforcement of the substantive res judicata and much more of the interpretive precedent of the ECtHR judgments and the only relevant provision is

207. ECtHR judgment *Sidiropoulos and Papakostas* v. Greece 25.04.2018.

208. By virtue of LD 53 of 19 / 20.09.1974 On ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950, as well as the additional to it Paris Protocol of 20 March 1952 (A '256).

209. See K. Chrysogonou, 2001, *The Integration of the European Convention on Human Rights in the domestic legal order, The Greek difficulties of adjustment to the European public order of human rights*, Ant. N. Sakkoulas.

the supervision of the execution of the judgment by the Committee of Ministers of the Council of Europe, provided for in Article 46 para. 2 of the ECHR. At a national level, as already clarified, in the framework of implementation of Article 46§1 of the ECHR under L. 4443/2016, in addition to having a special competence as a National Mechanism for the Investigation of Arbitrary Incidents, the Ombudsman also constitutes a National Mechanism for the Supervision of the Implementation of the ECtHR Judgments.

With the provision of Art. 41 of the ECHR implicitly clarify that the ECtHR judgments do result in the automatic reversal of the State's acts which are deemed by the Court to be in breach of the Convention, otherwise it would be meaningless to refer to this provision in domestic law[210]. However, the binding force arising from the irrebuttable presumption of truth that the final ECtHR judgment has pursuant to Art. 46§1 of the ECHR concerns the parties and the reasoning of the judgment, and therefore it is binding not only as to the interpretation of the critical provisions of the Convention[211], but also as to the establishment of the principal facts, as well as the compliance with the rules of law. Undoubtedly, the compliance with the provisions of PD 120/2008 is the scope of competence of the disciplinary body; however, the legal characterization by the ECtHR regarding the damage inflicted cannot be ignored (on the contrary it is binding under our national law) and the possibility of not being subject to disciplinary misconduct cannot be based on challenging the judgments of the Court. Besides, this is the essence of the additional regulation, introduced by para. 6 of Art. 188 L 4662/2020, pursuant to which the Ombudsman's decision on the re-investigation of the case has a binding force on the Hellenic Police *"and mandates a new investigation, in accordance with what is accepted by the European Court of Human Rights and as to the legal characterization of the investigated act"*.

Therefore, the rejection of the judgments and the principal facts established by ECtHR during the review of the disciplinary procedure and the challenge of the Court's findings through the identification of errors point to a series of legislative overrides and derogations. Among them is the override of the legislative scope of the responsibilities of the disciplinary control, as its supplementation should be based on the findings of ECtHR, attempting to subject them to the provisions of domestic law. To perform, in other words, a function that cannot be fulfilled by the Court and which, conversely, is the intended scope of the disciplinary procedure,

210. Ibid p. 385.

211. Ibid, p. 391.

as dictated by the combined provisions of PD 120/2008, Art. 188 L 4662/2020 combined with Art. 46, para.1 ECHR.

The obligation to take into account the case-law of the ECtHR is similarly emphasized both by our national case-law[212], as well as by the Court itself, especially in cases of complaints for violation of Article 3 of the Convention[213]. In these cases, Article 13 of ECHR requires an effective mechanism for establishing any liability of State officials or bodies for acts or omissions involving the breach of the victims' rights under the Convention and, if the allegations relate to torture or serious ill-treatment by public authorities, this mechanism must at least ensure a diligent and effective investigation, capable of leading to the identification and punishment of those responsible. For such a result to be desirable, it is considered necessary that the mechanism in question be based on an operational and regulatory model that is similar to the one used by the Court to assess specific complaints, which is also proposed to apply to court proceedings, should the case be referred to trial. Without disregarding the principles and rules governing domestic law and the commitments it generates for national authorities, under this provision, their interpretation in cases of acts directed against Art. 3 of the Convention, must be made in the light of the principles and criteria at the heart of the analysis undertaken by the Court through its judgments.

More importantly, the State must be taken into account and comply with the case-law on the same case for which a conviction has been issued against it. On the contrary, when the national authorities disregard the relevant case-law, questioning or challenging its obligations, in addition to the supervisory procedure suggested by Art. 46 para. 2 of the ECHR, paragraph 4 of the same Article provides for the possibility of the Committee of Ministers to refer a Country to the Court, due to failure to fulfill the obligation of compliance. This confirmatory procedure led to the issuance of a conviction against a Contracting State of the Convention through the ECtHR Judgment of 29.05.2019[214].

Finally, in the light of the above, the Ombudsman noted that the re-investigation of the case, since it is associated with shortcomings in the investigation already conducted, which were deemed equivalent to a substantial and procedural viola-

212. SC 8/2008, Criminal Justice2008, p. 1180 and Misdemeanor Court of Drama12 / 2009 Criminal Justice 2010, p. 48.

213. ECtHR judgment, *IVAN VASILEV v. Bulgaria*, 12.04.2007.

214. ECtHR judgment *PROCEEDINGS UNDER ARTICLE 46 § 4 IN THE CASE OF ILGAR MAMMADOV v. AZERBAIJAN*, 29.05.2019 (App. No. 15172/13).

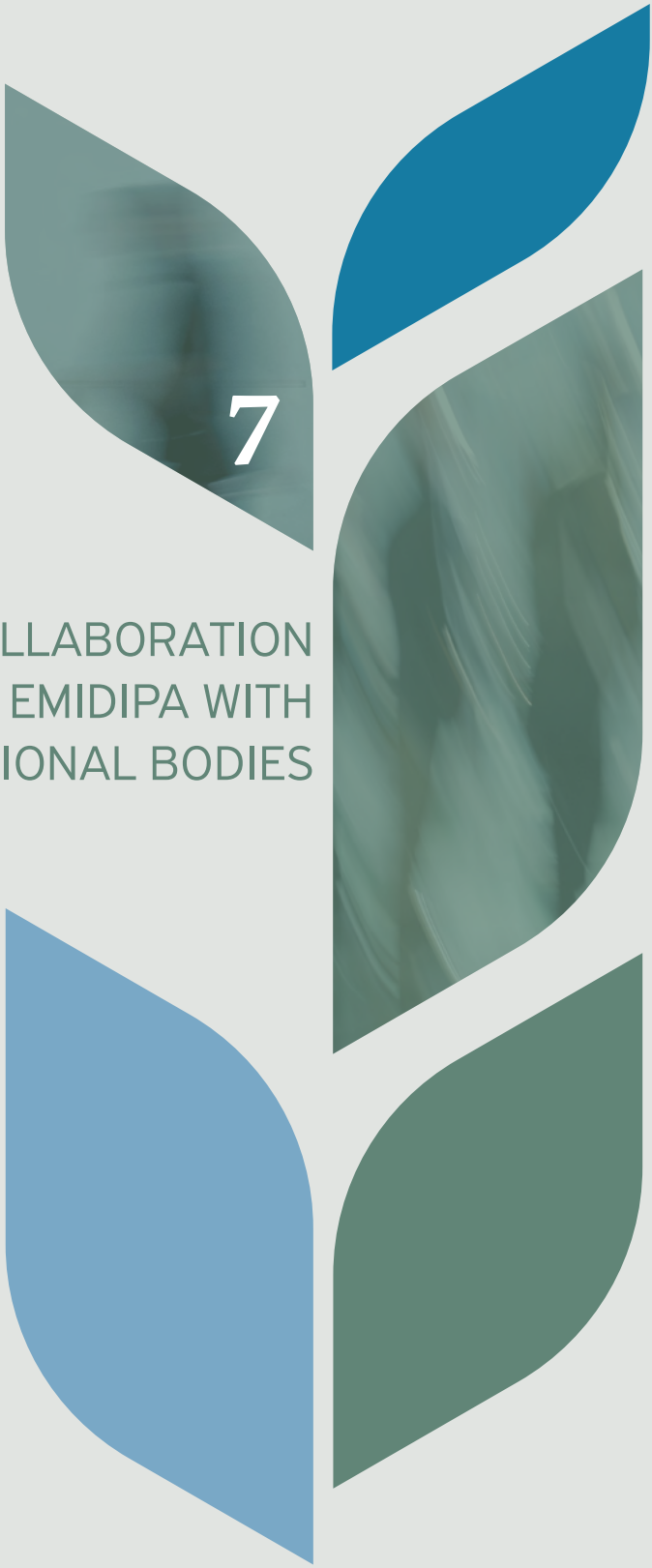
tion of Art. 3 of the ECHR, also needed to assess the necessity and legality of the use of tasers, based on the relevant regulatory legislation to which it should be subjected. A similar obligation is dictated by the specific ECtHR judgment.

To this end, the National Mechanism considered it useful to elaborate on the content of the 20th General Report of the Committee for the Prevention of Torture of the Council of Europe (CPT)[215] on this issue. Its utilization during the disciplinary control is necessary, given that the recommendations made therein are used as criteria for the ECtHR judgments which pertain to the use of electrical discharge weapons by the prosecuting authorities, in order to ascertain whether Article 3 of the ECHR has been complied with or not[216]. In this vein, in addition to the obligation to take general compliance measures with the judgment in question, the Ombudsman concluded that the aforementioned CPT recommendations should also be applied at a domestic level to serve as an adequacy measure of national legislation and the relevant regulations governing the use of such devices by the prosecuting authorities.

Given these circumstances, the National Mechanism decided to refer the case for further supplementation.

215. https://rm.coe.int/1680696a87.

216. ECtHR judgment, *KANCIAŁ v. Poland*, 23.05.2019.



7

COLLABORATION OF EMIDIPA WITH INTERNATIONAL BODIES

7. Collaboration of EMIDIPA with international bodies

The Greek Ombudsman is a member of the Steering Committee which is the new Governing Body of the Independent Police Complaints Authorities Network (IPCAN)[217], in which bodies from twenty-two (22) countries participate. Within the framework of the Network, issues such as the impact of coronavirus on the amendment of the legislation for the policing of demonstrations in several countries, the strengthening of the independence of Investigative Authorities through sufficient budget, but also through the possibility of selecting their staff, in accordance with the principles of the Venice Commission of the Council of Europe, as well as the procedures and safeguards for the obtainment, use and maintenance of video footage by the security forces were discussed this year. In fact, regarding the latter issue, a questionnaire was drafted and completed by the members of the Network[218].

In the context of the IPCAN activity, The Ombudsman participated online in the 7th seminar of the IPCAN network on *"External and Independent Mechanisms of monitoring of Police: functioning, interactions, and effectiveness"* on 03.12.2021. The topic of the speech of the Greek Ombudsman had to do with the safeguards of independence of the Police monitoring Mechanisms.

The interaction with the Police monitoring bodies participating in the Network IPCAN, has laid the foundations for a very constructive cooperation between the Greek Ombudsman as EMIDIPA and the corresponding institution of Northern Ireland[219], while the objective for next year is to strengthen this cooperation through the exchange of know-how and best practices, through a series of working visits between the executives of the two Mechanisms.

Finally, the contribution of EMIDIPA in the conference organized by the Council of Europe on 21.09.2021 on the role of National Prevention Mechanisms (NPM) in the implementation of ECtHR judgments in cases of police misconduct was

217. The IPCAN (Independent Police Complaints Authorities' Network) is a network of independent institutions, mainly from European Union member states, in charge of receiving and processing complaints against public security forces. For further information, see https://ipcan.org/.

218. https://old.synigoros.gr/resources/neo-140421-ipcan.pdf.

219. https://www.policeombudsman.org/.

essential. This specific conference served as an opportunity to present the experience of the Mechanism in an address on: *"Tackling the structural problem of ineffective investigations into alleged police ill-treatment"*.

8

LEGISLATIVE PROPOSALS – DEVELOPMENTS

8. Legislative proposals - developments

1. The increasing flow of the National Mechanism for the Investigation of Arbitrary Incidents on a yearly basis, without its simultaneous reinforcement in terms of human and material resources, is a constant and consistent parameter jeopardizing its effectiveness, or at least limiting the full utilization of the entirety of its institutional instruments.

   For this reason, the need for staffing the Mechanism with the necessary personnel, which was recently pointed out by the Council of Europe, during the positive evaluation of the operation of the National Mechanism for the Investigation of Arbitrary Incidents[220], should be harmonized with the safeguards of independence for the institution of the Ombudsman, provided for by the Venice Commission[221] and unanimously adopted by the Committee of Ministers of its Council. Among these safeguards is the establishment of a staff selection process by the Independent Authority itself, which does not constitute an innovation, but rather the standard procedure stipulated in the founding law of the Ombudsman (L 2477/1997) regarding the staffing of the Authority. Taking into account the experience of the previous, as well as the current staff selection process[222], this change is rendered absolutely imperative.

2. The Ombudsman has also proposed the addition of a provision to the third subparagraph of para. 4, Article 1 L 3938/2011, as replaced by Article 188 of L 4662/2020, so that in any case of investigation of a complaint or an incident by the Ombudsman, the period of duration of the suspension of the issuance of a disciplinary decision by the competent disciplinary body after the issuance of the findings report of an administrative investigation, i.e., until the issuance of the Ombudsman's findings report, is not counted in the limitation period of the relevant disciplinary offense. This provision would be particularly useful in cases where no criminal prosecution has been initiated against the police officer involved, which would de facto result in the suspension of the statute

220. https://www.synigoros.gr/el/category/nea/post/to-symboylio-ths-eyrwphs-gia-thn-apotelesmatikothta-toy-e8nikoy-mhxanismoy-diereynhshs-peristatikwn-ay8airesias.

221. https://www.venice.coe.int/WebForms/pages/?p=02_Ombudsmen&lang=EN.

222. Quite characteristically, the process of filling the five (5) positions which, in recognition of the absolute need for staff reinforcement of the Mechanism, the legislator has already foreseen in 2020 (Art. 28 para. 2 L 4760/2020 (A '247) has not even started yet.

of limitations of the offense, as well as in cases where, at the discretion of the competent authorities, there is a risk that any disciplinary misconduct could be barred by statutory limitations. It is also noted that in the light of the provisions of Art. 188 para. 5 and 6 of L 4662/2020, through which the legislator has already ensured the relevant statute of limitations on cases handled by the Ombudsman and for which a conviction has been issued by the ECHR, thus insisting on the condemnation of the conduct, the proposed provision is consistent with the legislature's intention.

3. The problems identified by the Ombudsman during the conducted administrative inquiries of the Hellenic Police display a number of consistent features that are repeated every year, despite the fact that the National Mechanism constantly directs attention to the principles of effective and diligent investigation arising from law and case-law. Hence, there is a need for further specialization of people conducting the investigations, the vast majority of which are preliminary investigations, so that they familiarize themselves with the findings of the National Mechanism and the case-law, as well as with the horizontal implementation of fundamental principles for the completeness of any internal investigation regarding cases of arbitrariness under Art. 1 para. 1 L 3938/2011, as in force.

Instead of heavily relying on the conduct of preliminary inquiries (PDE) against officers of all police directorates of the country regarding cases of arbitrariness, the National Mechanism proposes that the amendment of PD 120/2008 should be considered, in order for all the administrative inquiries into these incidents, including the PDE, to be assigned to specialized executives of the Sub-Directorate of Administrative Inquiries of the relevant General Regional Police Directorate (GEPAD). Of course, this centralization of administrative inquiries, from a prefectural level to a regional one, presupposes the reinforcement of staffing of the Sub-Directorates of Administrative Inquiries of GEPAD across the country.

Additionally, returning to legislative proposals which have been put forward in EMIDIPA reports of previous years and have not been institutionalized yet, the Ombudsman restates and once again proposes the following:

4. Obtaining and preserving video footage from detention facilities.

The evidentiary value that video footage has due to its objectivity makes its preservation necessary, especially in cases where there are indications of injury and / or use of force against a person who is within the sphere of responsibility of the authorities. Considering that according to the established case-

law of the ECtHR, detainees are in a vulnerable position[223], which additionally requires that the burden of proof is reversed and, consequently, the obligation to provide evidence as to the causes of the injury and the reasonable extent of the force used is shifted to the authorities[224]. EMIDIPA reiterates its proposal: a) to install cameras in all detention areas of the security services (including police detention rooms or detention centers in LS - ELAKT, Fire Brigade), at a camera angle that ensures the privacy of detainees (coverage of corridors, common areas and entrance to custody cells), b) to obtain and compulsorily retain the relevant video footage on a storage medium for a period of at least three months until the completion of the disciplinary investigation, in cases involving a complaint for use of force and c) to forward the video footage to the bodies responsible for criminal preliminary interrogation as well as the body responsible for the administrative investigation of the case, so that it forms part of the disciplinary control, as well. The storage of the material on a specific external storage medium should be followed by a relevant report and the material should be stored in a place inaccessible to staff. This option will ensure its preservation, the restriction of access to it, but also its forwarding to the bodies responsible for administrative investigation.

5. Reporting in the EDE findings of the evidence on which the judgment of the disciplinary body is founded.

In addition to attaching the list of evidence collected, it is essential that the findings report of the internal administrative inquiry make specific mention of the evidence utilized in shaping the judgment of the body conducting the inquiry. Their mention is necessary for the completeness of the investigation, as well as the reasoning of the decision, without it being required to make a more specific reference to which means of evidence corresponds to each conclusion in the findings report. In fact, given that during the disciplinary procedure there is a proportional application of the institutions and practices of criminal law, the Ombudsman has proposed the utilization of the established case-law of the Supreme Court,[225] which dictates that all the means of evidence be taken into

223. ECtHR judgment, *Tomasi v. France*, 27.08.1992.

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

225. See SC 659/2015.

consideration and included in the formation of the judgment. However, in order to satisfy the obligation of specific and thorough reasoning, the consideration of all the evidence which was introduced in the disciplinary proceedings and support the two conflicting sides must not simply be made with a reference "by type", but with a specific reference and assessment of the evidence taken into account when drawing and establishing conclusions.

6. Cross-examination of witnesses in the disciplinary procedure.

By virtue of Article 33 para. 1 of PD 120/2008, the provisions concerning the summoning and examination of witnesses as well as the manner of examination of the accused, shall apply mutatis mutandis to the disciplinary procedure. Given that the ECtHR has noted that witnesses shall not be subjected to a non-cross-examination, despite the relevant request of the applicant, which applies mainly to criminal procedure, it would be appropriate for this type of examination to be applied to the disciplinary procedure, subject to certain safeguards. To this end, in cases falling within the competence of the Mechanism, provision could be made for a cross-examination of persons in the context of the administrative inquiry, in the presence of representatives of the EMIDIPA. In this way, the observance of all the provided safeguards will be monitored and the secondary victimization of the complainants will be prevented, while the impartiality of the investigation will be ensured. However, given the capabilities and potential of the Mechanism, approval should be sought to carry out this examination. The body conducting the inquiry will have the competence to put questions and he or she will also ask the questions that the representative of the Mechanism has indicated.

7. Issuance of pending regulatory acts on the disciplinary law of employees subject to the Mechanism - Modernization and improvement of old provisions.

In compliance with the principles of good legislation and the legitimate expectations of the persons governed and disciplined. It is imperative that outstanding issues as to the adoption of regulatory acts and the exercise of the relevant legislative mandate should be resolved and the relevant acts should be issued. It is specifically noted that the provided for in the Article 51 of L 4504/2007 P.D. regarding the Discipline Regulation of LS - ELAKT, despite the existence of a relevant deadline in the enabling provision, has yet to be issued. In addition, in the same context, legislation in the field of disciplinary law whose obsolescence gives rise to implementation issues should be updated and improved and the legislation regarding the personnel of the bodies subject to the Mechanism should be codified. For instance, Article 96 of L 4249/2014 provides for the issuance of a Presidential Decree on the cod-

ification of the provisions concerning the Fire Brigade, which, however, has not been issued yet.

8. Issues related to legislation on the use of arms.

Law 3169/2003 regulates the use of firearms by police officers and in Article 3 provides in detail and in accordance with the international law in force for the use of firearms and the principles governing it. In this context, the relevant legislation on the use of arms by other security forces and the external guard personnel, must also comply with the same principles regarding the use of firearms, taking into account the specificities of each case. The relevant legislation concerning the use of firearms should be updated in order to meet the emerging needs and safeguard the protection of human rights. The possession and the use of arms by the Fire Brigade is regulated by Royal Decree 656 of 14.10.1972 and it might be advisable to update it. The use of firearms by a police officer gives rise to an obligatory report to the judicial authorities and to the competent police authority and by extension any use of firearms is investigated by the inquiry of an EDE[226].

The non-monetary recognition given to police officers in the form of the police prize of bravery, pursuant to Article 4 of PD 622/1998, can be awarded *"for an exquisite act of bravery, which took place in a clash with gangs or armed insurgents or armed persons who are dangerous to Public Order and Security or foreign propaganda instruments, acting either in groups or individually, in which he has proven to expose his life to direct and imminent danger and which objectively far exceeds the execution of the well-meaning duty"*. The attestation of the act of bravery is made upon the conduct of an EDE, pursuant to Article 1 para. 2 of PD 144/1991. Undoubtedly, its legal basis and the procedure followed differ, but the findings of the EDE conducted for the use of a firearm, should unquestionably be part of the EDE file regarding the award of the police prize for bravery or any other moral reward. In fact, it should be provided that the EDE findings report on the use of arms is necessary in order to ascertain the act of bravery and that the relevant moral reward cannot be awarded if the findings of the EDE on the use of a firearm point to its misuse.

9. Protection of employees - witnesses of arbitrary incidents Articles 26, 110 and 125 of the Code of Status of Civil Servants and NPDD Employees include provisions that dictate the administrative protection of civil servants, which

226. See Art. 4 para. 10 L 3169/2003 and the provisions of Art. 2 para. 8.

are part of the protection of public-interest witnesses and in general of persons who contribute to the disclosure of acts of corruption in the public sector. These particular provisions seek to avoid the unfavorable treatment of the persons concerned during the period of time required for the judicial investigation of the case.

Besides the fact that these specific provisions concern only the reporting of acts of corruption, the specific provisions regarding the personnel of security forces on relevant issues, such as L 2713/1999 for the Internal Affairs Service, do not include relevant provisions for the personnel of security forces and therefore only by virtue of the general provision of Article 2 of the Code of Status of Civil Servants and NPDD Employees could the personnel of security forces be subjected to them. Therefore, the witnesses of acts provided for in L 4443/2016 and fall into the competence of the National Mechanism for the Investigation of Arbitrary Incidents, when they are colleagues of the accused or perpetrator of such acts, are not encouraged to report such acts, nor are they protected.

Consequently, if the legislator's intention continues to be the confrontation of incidents of arbitrariness by the personnel of security forces and detention facilities and if the assumption that the monitoring and investigation of criminal activity of officials "by their colleagues exhibits serious peculiarities for the sake of emotional connection, misconceived collegial solidarity, interventions by hierarchical superiors for lenient treatment, pressure by common acquaintances, threats against them, their family members and their property, etc.", is true, legislative initiatives must be taken immediately, at least to protect officials - witnesses in cases of arbitrary incidents by their colleagues. In this context, the following should be provided for officials - witnesses of arbitrary incidents by their colleagues:

a) the self-evident provisions for their protection, and in particular:
   - the prohibition of any unfavorable official treatment of the employees who testify or complain in writing to the competent (disciplinary or non-disciplinary) bodies or to the Mechanism in disciplinary or non-disciplinary procedures on acts of arbitrariness committed by their colleagues, as provided for in Article 56 of L 4443/2016 and, thus, the reversal of the burden of proof in disciplinary proceedings in favor of officials who contributed substantially to the disclosure and prosecution of acts or incidents of arbitrariness

- the observance of the anonymity of the employees in the disciplinary procedure and the access of the complainant to their data solely during the disciplinary proceedings or by order of the prosecutor, in order to use their data in a pending trial

b) the possibility to request for exceptional movement or transfer to a Service of their selection in case they have testified or filed a complaint in writing to the competent (disciplinary or non-disciplinary) bodies or the Mechanism, and the mandatory satisfaction of their request by the competent bodies.

10. Provision for financial sanctions against retired officials-pensioners.

The National Mechanism has proposed the amendment with a corresponding addition to Article 6 para. 3 of PD 120/2008, so that, in case of issuance of a ECtHR judgment which convicts our Country ordering it to pay compensation due to deficiencies of the disciplinary or criminal procedure, financial sanctions are provided for against the retired officials-pensioners, who committed the investigated illegal acts.

In addition, EMIDIPA has proposed the amendment of PD 120/2008, so that in case of criminal prosecution for committing crimes under Article 137A (corresponding disciplinary misconduct under Article 10 para. 1 case c of the PD 120/2008), the measure of suspension is explicitly imposed and in case of an ongoing EDE (regardless of the exercise of criminal prosecution or lack thereof) the measure of temporary transfer is imposed, by transferring the personnel to a service, where they will not perform the duties provided for in Article 137A PD and in particular *"prosecution or interrogation or investigation on criminal offenses or misdemeanors or execution of sentences or guarding or custody of detainees"*, including persons brought in for questioning.

Abbreviations

App	Appeal
Art.	Article
C	Constitution
CCP	Code of Criminal Procedure
CoS	Council of State
CPT	European Committee for the Prevention of Torture
D.E.Ath	Administrative Court of Appeal of Athens
DIAS	Motorcycle Police
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EDE	Administrative Inquiry Under Oath
EisNAK	Introductory Law to the Civil Law Code
EKAM	Special Suppressive Anti-Terrorist Unit
ELAKT	Hellenic Coast Guard
ELAS	Hellenic Police
EMIDIPA	National Mechanism for the Investigation of Arbitrary Incidents
EU	European Union
F.	File
GADA	Attica Police Headquarters
GEPAD	General Regional Police Directorate
GO	Greek Ombudsman
Iss.	Issue
KYE	Establishment of Sanitary Interest
L	Law

LCS	Legal Council of the State
LD	Legislative Decree
LS	Port Authority
MME	Media
N.	Next
NGO	Non–Governmental Organization
No.	Number
NPDD	Legal Entity Governed by Public Law
NPM	National Prevention Mechanisms
P	Page
Para.	Paragraph
PC	Penal Code
PD	Police Department
PD	Presidential Decree
PDE	Preliminary Administrative Inquiry
PDPA	Personal Data Protection Authority
Pl	Plenum
Prot.	Protocol
R.	Recital
SC	Supreme Court
THEPEK	Traffic Control and Monitoring Operations Room
UN	United Nations Organization
VAS	Book of Offences and Incidents

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