NATIONAL MECHANISM FOR THE INVESTIGATION OF ARBITRARY INCIDENTS

REPORT
2019

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THE GREEK OMBUDSMAN
INDEPENDENT AUTHORITY

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Introduction

The present report of the Ombudsman, as the National Mechanism for the Investigation of Arbitrary Incidents, is the second one since the launching of operations of the Mechanism. In the first report[1], a detailed reference is made to the history of the institution of independent monitoring of incidents of arbitrariness by the security forces as well as to the fierce criticism by the Council of Europe bodies, focusing on the incidents of inadequate disciplinary investigation and impunity that were sanctioned by the European Court of Human Rights, relating to violations of articles 2 and 3 of the European Convention on Human Rights as to the protection of life and physical integrity and the prohibition of torture, inhuman and degrading treatment. The legislative initiatives in 2011 and 2014 to set up a complaints' office and an internal audit committee of the disciplinary investigation of incidents attributed to the operation of the Greek Police are also mentioned; and so is the fact that those past initiatives resulted in arrangements that were never put into real effect, as the envisaged bodies were never constituted.

Law 4443/2016 stood for a truly inspiring legislative initiative; article 56 of the aforementioned law established the Ombudsman- an Independent Authority with constitutional guarantees of personal and functional independence- as the National Mechanism for the Investigation of Arbitrary Incidents for the uniformed personnel of the Police, the Coast Guard, the Fire Department and the employees of penitentiaries. This specific competence consists in the independent investigation of complaints about specific incidents of arbitrariness, the referral to the security forces for an internal investigation, reserving oversight powers and the right to submit recommendations and directives on improving the quality of the investigation; in addition, the Mechanism was mandated with the power to order a re-opening of the disciplinary investigation, following a relevant decision of the European Court of Human Rights.

By entrusting to the Ombudsman, that is to the independent, constitutionally enshrined, authority elected by (and accountable to) a very large par-

1. https://www.synigoros.gr/?i=human-rights.en.recentinterventions.585803 pp.7-14.

liamentary majority –which requires cross-party consultation and ensures the legitimacy of the institution– powers to both investigate incidents of arbitrary behavior and to exercise oversight on disciplinary procedures, our country has been added to an extremely limited group of European states, with a significant track record of police arbitrariness, and/or tradition and a strong sensitivity to the transparency and accountability of state action, where peer institutions have assumed similar responsibilities. Typical cases are the mechanisms operating under peer institutions in France, Denmark, Switzerland, Ireland, the United Kingdom (with separate jurisdictions in England and Wales, Scotland and Northern Ireland, where the institution has played a central role in the cessation of hostilities by the communities).

The Ombudsman's mission is crucial; to ensure

- legality and respect for substantive and procedural safeguards for a full and thorough investigation,
- solid grounds for the disciplinary charges and, thus, the avoidance of perforated charges and proceedings which may lead either to vindications of guilty parties or to convictions of the country by the ECtHR,
- protection of the rights of victims as well as those under investigation,
- proper investigation of each incident, and, thus, ensure the appropriate level of accountability expected of a state governed by the rule of law,
- the transparency of the procedure.

Clearly a mission that strives to ensure key precepts of every democratic state and prime claims of every pluralist society.

The Ombudsman undertook this mission bearing full sense of the responsibility for the protection of the rights of both the alleged victims and those under investigation. Since the entry into force of the aforementioned provisions, on 9.6.2017, the Ombudsman became an external investigative and control mechanism, in parallel with the administration, without replacing the internal disciplinary bodies, in compliance with the principle of the *"juge naturel",* applicable also to disciplinary proceedings. Scrutiny by the internal disciplinary bodies is imperative for any alleged disciplinary misconduct, as a thorough investigation restores not only the legitimacy of the administrative action but also the status of the service, while acting as a deterrent to similar behaviors in the future. A cover-up, or even its suspicion, is completely unacceptable, as it smacks a major blow to social cohesion and the rule of law.

Under these basic assumptions, the first report of the National Mechanism for the Investigation of Arbitrary Incidents for the years 2017-2018 highlighted horizontally the main shortcomings of investigations of the disciplinary bodies of security agencies and of employees of detention facilities (omission of witnesses, faulty appraisal of evidence, etc.), with the aim of contributing to the improvement and scaling up of procedures, in accordance with the criteria of national and international case-law. To this end, it also included a number of proposals to amend the relevant disciplinary legislative framework.

The present report, the year 2019, makes a critical assessment on the level of improvement of the relevant procedures and of adoption of the National Mechanism's fillings. The comparative overview of the findings of this report with those of the first one demonstrates the degree of compliance of the internal disciplinary bodies with the recommendations and directives of the Ombudsman's Mechanism. Full consolidation of procedural and substantive guarantees of effective, transparent, non-discriminatory and consistent with the dictums of the rule of law and the jurisprudential principles is not expected to be achieved at once. It requires persistent efforts, without derogations and concessions. What is more, the modernization of the internal disciplinary law of the bodies under investigation, as well as the strengthening the Ombudsman's Mechanism are conditions sine qua non.

The recent amendment of the disciplinary law of police personnel by Presidential decree 111/2019 (A' 216/31.12.2019) constitutes an essential, positive step. Under this amendment, some of the main proposals of the Mechanism were legislated, such as ensuring the impartiality of the investigators, of the required independence between the investigator and the investigated, of the independence of disciplinary procedures from the criminal investigation of the case and the exceptional nature of suspending the former in view of the latter, of reducing the time frame for the conclusion of investigations etc., as analyzed in the relevant chapter of the report.

The main findings and proposals of the National Mechanism are detailed also in 70 case-file reports issued in 2019, concerning disciplinary investigations on conduct allegedly falling under article 137A Penal Code, breaches of personal freedom, assaults to life and physical integrity, use of firearms, conduct that constitutes discrimination or is carried out with a racist motive, as well as commonly identified procedural issues of disciplinary investigations.

A second, decisive legislative step is presented by Law 4662/2020. The arrangements introduced are in response to the relevant proposals that the

Ombudsman submitted to government as early as in October 2018 and signal the necessary strengthening of the National Mechanism by institutional means (subpoena of witnesses, receipt of affidavits, ordering an expert opinion, etc.), in order to be able to carry out its vital mission, taking advantage of the possibility of independently investigating some incidents. Now, the National Mechanism for the Investigation of Arbitrary Incidents is in a new, upgraded, operational phase. The choice to conduct its own investigations is now genuine; it is real. The Authority's investigation will be governed by the same safeguards and will be equipped with the same investigative tools as those available to internal bodies of the security forces and detention center employees. It is worth mentioning, among the various provisions approved by Parliament,

- the elimination of the impediment to an Ombudsman investigation when criminal proceedings are brought in the same case for which disciplinary investigation is under way; with this arrangement, the paradox of criminal proceedings not affecting the continuation of disciplinary proceedings when carried out by the internal body, but preventing the corresponding investigation carried out by the Ombudsman's Mechanism is resolved,

- the explicit provision of the power to summon witnesses, to obtain affidavits, to order an expert opinion,
- the explicit waiving of the secrecy clause for (pre)investigative material, for the purposes of the Ombudsman's Mechanism investigation,
- the provision for the suspension of the time limits for the Mechanism when further information has been requested by the competent internal body,
- the seamless flow of information on complaints and internal investigations carried out by the competent authorities,
- the explicit provision of reservation of the Mechanism's own investigation in cases for which it has decided to forward them to the competent authorities, if they are re-assessed as more serious than originally estimated,
- the option of referring the decision of the internal disciplinary body to the Minister in cases of unjustified deviation from the case-file report issued by the Ombudsman's Mechanism, whether the report was drawn up after an own-initiative inquiry[2] or asserting the internal investigation carried out by the relevant internal bodies.

2. Article 1 para. 4 of 3938/2011, as in force

At the same time, arrangements are also introduced to facilitate the special competence of the Mechanism in cases culminating after convictions of the ECtHR, by clarifying issues relating to the principle of ne bis in idem, as well as by verifying the prescription period of disciplinary offences

These institutional developments come at a time of a charged political debate over the legality of police operations, in particular. The significance of the existence of the Ombudsman's Mechanism and the further strengthening of its operational capabilities is now recognized not only by those directly involved in investigations of incidents of arbitrariness conducted by security agencies and employees of detention facilities, but also more broadly by society, as constituting the necessary institutional guarantee of a full, thorough, impartial and independent investigation of any complaint.

Incidents of arbitrary behavior or misconduct have occurred and will continue to occur. The challenge for the Ombudsman is to contribute to transparency and institutional accountability, to the effective investigation of every illegal and culpable behaviour that affects internally the credibility of the security forces, whose mission in a state respecting the rule of law first and foremost the protection of citizens. For this reason, the substantial upgrading of the disciplinary investigations of the administration is not only an objective of the specific competence of the National Mechanism, but also a considerable trial for the rule of law in our country.

Andreas I. Pottakis
Ombudsman

1

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 Ombudsman, in a special report in 2004, had systematically analysed the usual misdeeds of Greek Police disciplinary investigation based on the complaints it had received in the context of its general mandate for safeguarding the legality and protecting people's' rights[3]. Moreover, the Independent Authority, with its special report on racist violence in 2013[4] , highlighted the divergence between official investigations carried out by ELAS and the quadruple-number of complaints addressed to mass media on racist violence, as well as the small number of completed internal investigations. The Ombudsman pointed out that the image of impunity had to be overturned "in favor of the very credibility of the police and the strengthening of public confidence in the impartial judgment of police, as well as the constitutional directives " for addressing the phenomenon of racist violence.

The absence of an effective investigation of these incidents by the Greek authorities was also highlighted in a series of judgments of the European Court of Human Rights. In some of those cases, the ECtHR refers to the relevant findings and reports of the Ombudsman[5] in its decisions. At the same time, a series of complaints from citizens to the Ombudsman on police violence ended up in the Strasbourg Court.[6]

The shielding of the rule of law was and still is indeed at issue as for the allegations on mistreatment by the police; same way it was put by the Commissioner for Human Rights and other institutions of the Council of Europe, i.e. a rule of law requirement – and a deficit. In order to maintain public trust in the police, the Commissioner for Human Rights of the Council of Eu-

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3. https://www.synigoros.gr/?i=human-rights.el.elegxos-astunomia.64209. Some of the proposals in the report have led to changes in the disciplinary law of Police under p.d 120/2008.

4. https://www.synigoros.gr/?i=human-rights.en.recentinterventions.131435.

5. See indicative decisions *Makaratzis vs Greece*, 20.12.2007, *Zontul vs Greece*, 17.1.2012.

6. *Zelilov, Bekos-Koutropoulos, Petropoulou-Tsakiri etc.*

rope proposed[7] on this the creation of an independent and effective complaints system which would also serve as a fundamental means of protecting against mistreatment and misconduct.

Pursuant to Law 4443/16 (A' 232), Article 56[8] it was assigned to the Ombudsman a special mandate to investigate complaints about members of the security forces, for specific arbitrary incidents. This competence comprises:

- the uniformed personnel of the Greek Police, the Greek Coast Guard, the Fire Department and the employees of the Penitentiary Facilities
- the arbitrary incidents provided for in that provision:

"a. torture and other violations of human dignity within the meaning of Article 137A of the Penal Code;

b. unlawful intentional infringements to life, physical integrity, 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" [9]

The above acts must have occurred in the exercise of the duties of the officers in question or as an abuse of their power.

This competence consists of:

(a) the independent investigation of complaints or the reference to the security bodies for an internal investigation of incidents of arbitrariness, while monitoring and possibly requesting a supplementary investigation and

(b) the decision to reopen or supplement the disciplinary procedure, in accordance with relevant decisions of the ECtHR.

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7. https://rm.coe.int/opinion-of-the-commissioner-for-human-rights-thomas-hammarberg-concern/ 16806daa54.

8. Article 56 of Law 4443/2016, which replaced Article 1 of Law 3938/2011. The provision has been replaced by Article 188 of Law 4662/20, which does not alter the substance of that specific competence but complements it. On amendments, see chapter of legislative developments below. The new provision is reproduced at the end of this report as an Annex.

9. According to paragraph 1 of Article 56, "due to characteristics of race, colour of national or ethnic origin, descent, religion, disability, sexual orientation, identity or gender characteristics". These reasons have been enriched by Article 188, L.4662/2002.

The Ombudsman as the National Mechanism for investigating Arbitrary Incidents (EMIDIPA.) evaluates each case that falls within its competence and decides either to investigate it in its own or to forward it to the competent disciplinary body, which must examine it as a matter of priority. The Mechanism shall assess the outcome of the disciplinary proceedings, i.e. the outcome and the whole file of the administrative investigation and may request a supplementary investigation of the case. In any case, the decision of the relevant disciplinary bodies is suspended until a file-report is issued by the Ombudsman. Any deviation from the Ombudsman' s findings is allowed subject to specific and thoroughly justified reasoning.

The National Mechanism deals with cases following a complaint, either of its own motion or by reference by the competent Minister or Secretary-General. Complaints submitted to the Mechanism must, according to the law, be in writing and not anonymous and submitted in person or by proxy. It is even possible, in case the investigation is not hindered, to avoid disclosing the name of the complainant. Should it be impossible to investigate the case without disclosing the name of the complainant who objects to disclosure, the complaint is filed. However, the National Mechanism may use specific information contained in complaints that do not meet the above conditions of admissibility, as well as media reports, in the context of its discretionary power for an ex officio investigation. The exercise of the powers of the Mechanism is supervised and coordinated by the Head of the Ombudsman's Office, as assisted by a team of investigators with expert legal background, in which the Head of the Human Rights Department participates. In December 2019, 8 expert investigators participated in the Mechanism team. The specific procedure for investigating the cases of the Mechanism, which is distinguished from the general operation procedure of the Ombudsman, is described in the Rules of Operation of the EMIDIPA[10].

With regard to the second part of this specific competence, the Ombudsman becomes a mechanism for complying with ECtHR decisions, in reference to infringements of provisions of the ECHR, on basis of which deficiencies in the disciplinary procedure or new elements which have not been assessed during the disciplinary or domestic Court proceedings are identified. The Mechanism shall review these decisions and may decide to request the reopening of the case by the Administration in order to initiate or supplement disciplinary proceedings and to impose the appropriate disciplinary sanction, regardless of the outcome of the initial hearing of the case.

10. Ombudsman Decision F.10/24727/2017, Official Gazette B' 2065.

As clearly indicated in the wording of the law, and clarified in the explanatory memorandum of the law, the Mechanism does not substitute the competent judicial and disciplinary bodies, but operates in parallel and complementary to their jurisdiction, without depriving the person under investigation from the *"juge naturel"* (penal or disciplinary)[11]. The Law provides for the disclosure to the Mechanism of any information held by public services and the broader public sector, as well as the possibility of obtaining copies of the entire file regarding any disciplinary cases, that have been already briefed and fall within its competence.

The entry into force of these provisions on 9.6.2017 was followed by an initiative of the Ombudsman for applying a functional framework of seamless flow of information to the Mechanism and for clarifying at an early stage the involvement or monitoring of the Mechanism to relevant administrative investigations. By order of the Head of Police, all relevant sworn or preliminary administrative examination orders for incidents that fall under the specific description of the law shall be forwarded to the Mechanism. Subsequently, a similar response was also received from the Coastguard, with a significantly smaller number of cases of arbitrary incidents.

The first report of the National Mechanism[12] analysed the systemic problems identified in the relevant investigations completed for the years 2017-2018, concluding with corresponding proposals to supplement the disciplinary law of the personnel of the security forces and to a series of proposals to strengthen the Mechanism in order to operate more effectively and to facilitate the actual conducting out of its own independent investigations. The current, second report of the National Mechanism assesses the response to these proposals (see chapter of legislative developments below).

The second report also presents the performance of the Mechanism in 2019, with statistical and qualitative data, which illustrate the main problems identified in terms of the investigation of arbitrary incidents, both per thematic category and in horizontal procedural issues.

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11. para. 9 Article 56 9. The competence of the Ombudsman as a National Mechanism for the Investigation of Arbitrary Incidents does not substitute the existing structures for submitting and dealing with complaints of arbitrariness to other institutions or authorities.

12. o.c. note.1

2

Statistical assessment

2. Statistical assessment

A **total** of 208 cases were submitted in 2019[13] to the Ombudsman as for the specific incidents that the law provides to be under the specific jurisdiction of the National Mechanism for the Investigation of Arbitrary Incidents.

In 30 cases, individual complaints were submitted. In most cases, the National Mechanism was informed about potential arbitrary incidents by ELAS and the other administration bodies, which forwarded the relevant orders for internal investigations that the Mechanism decided to monitor. It should be noted that in such cases, the forwarding to the Mechanism for its monitoring implies, according to the law, that (a) the findings and files of the internal investigations are forwarded to the Ombudsman to check on their completeness and (b) the relevant disciplinary bodies shall suspend their decision until the Ombudsman issues a case-file report. In particular, in 2019, 176 cases were forwarded to the National Mechanism by ELAS and 1 by the LS – ELAKT (see Chart 1, case origin).

It is noteworthy that since the beginning of the operation of the National Mechanism, on 9.6.2017, until the end of 2019, no disciplinary case was forwarded by the General Secretariat for Crime Policy [14] concerning the investigation of incidents that could fall within the scope of Article 56 of Law 4443/2016 concerning acts or omissions of the employees of the Penitentiaries, unlike ELAS, which demonstrated in practice a willingness to be transparent, systematically forwarding to the Ombudsman the relevant investigations. In June 2019, the Ombudsman sent a letter to the General Secretariat

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13. Article 1 para. 1 of Law 3938/2011 as amended by Article 56 of Law 4443/2016; torture and other violations of human dignity pursuant to Article 137a of the Penal Code, unlawful intentional infringements of life, physical integrity, health personal freedom or sexual freedom, illegal use of a firearm, unlawful conduct with racist motive/discrimination etc.

14. The Ombudsman, however, in regards to isolated but frequent in 2019, incidents of death of prisoners in Penitentiaries, requested information and adequate investigation by the General Secretariat for Counter-Criminal Policy, based on the special competence of Law 4228/2014, according to which "[the] Ombudsman is defined as the "National Prevention Mechanism for the Prevention of Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment" (UN OPCAT Convention).

Chart 1: Case origin

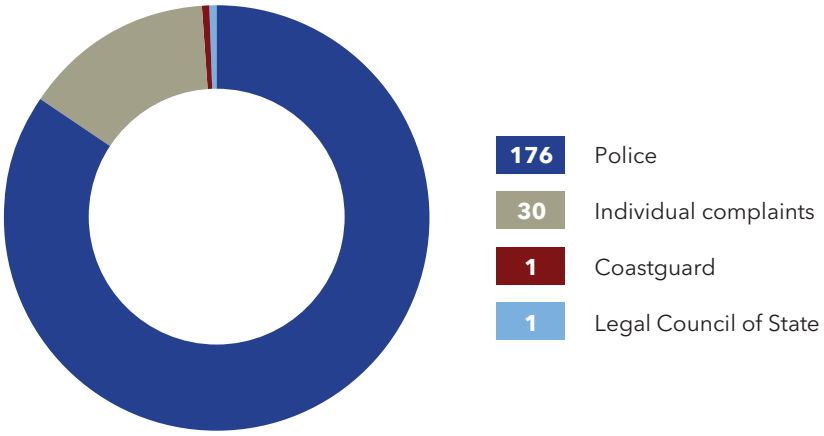
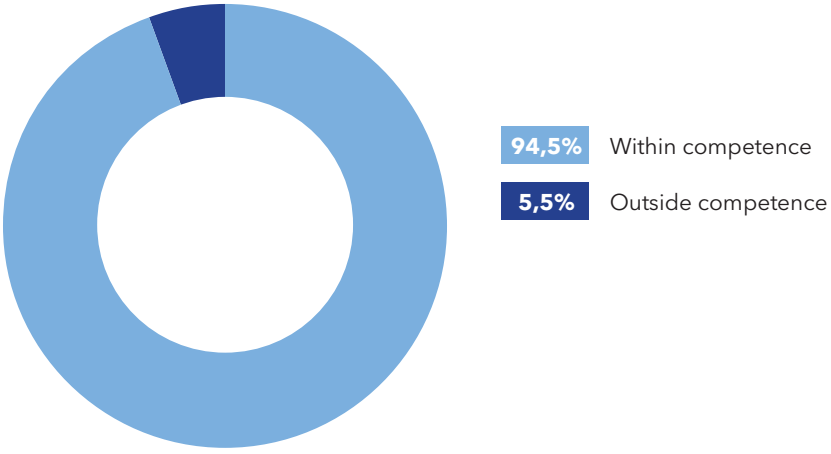


Chart 2: Cases of the National Mechanism in 2019

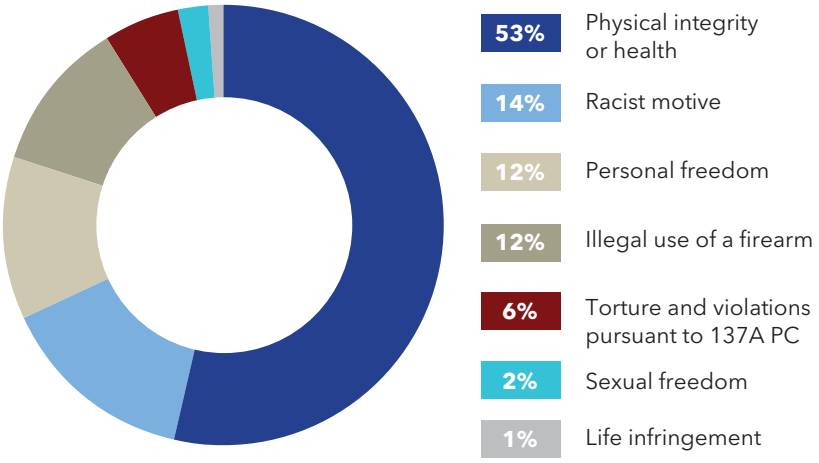


for Crime Policy[15], requesting again[16] their effective and systematic cooperation in the context of the National Mechanism's mandate for investigating Arbitrary Incidents, without, however, any response till today.

15. Initially a Secretariat of the Ministry of Justice, Transparency and Human Rights, which in July 2019 was transferred to the Ministry of Citizen Protection (pd 81/2019, A' 119/8.7.2019).

16. As the launching of the National Mechanism's mandate for Investigation of Arbitrary Incidents in June 2017, the Mechanism requested the cooperation of all the bodies involved in this specific competence.

Chart 3: Cases per thematic category

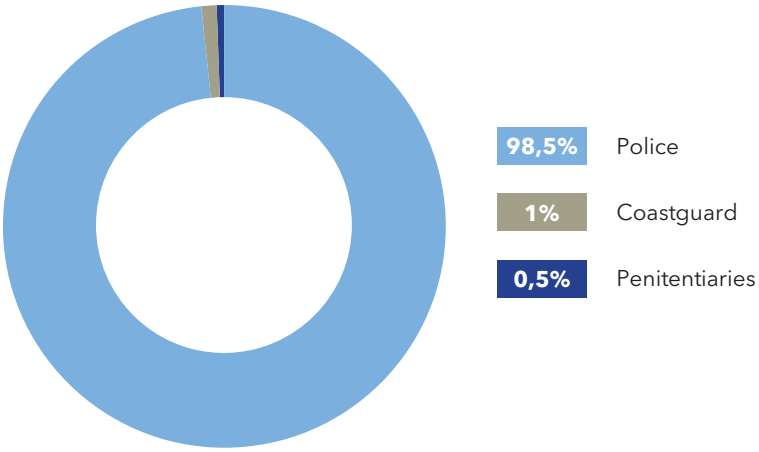


Out of the 208 cases brought to the National Mechanism in 2019, 12 were out of competence (see Chart 2**, out of competence** cases). It should be noted that, in addition to cases outside the subject matter of the competence at issue, there were also cases in which there was no complaint from the victim itself or its proxy, as required by law. What is more, there were complaints with insufficient information to open an investigation or even cases where the complainant did not eventually want to proceed with the investigation of the case; in particular there was a case of a minor alien for whom a complaint for mistreatment was filed by an NGO **(F. 259576)** but they did not convince him to testify, which confirms the so-called 'grey number' of arbitrary incidents, in which the alleged victim's fear of being involved in official proceedings consists a crucial counter-factor of the right to petition.

One of the cases reported in 2019 concerned the judgment of the ECtHR in Sarwari vs Greece, adopted on 11.4.2019, which was forwarded to the Mechanism by the NSK, in order for the Mechanism to assess whether a resumption of disciplinary proceedings can be carried out by the Administration, in particular ELAS (see section of this report on the enforcement of ECtHR decisions).

In addition to this separate competence of the Mechanism regarding compliance with ECtHR decisions in disciplinary proceedings, the remaining 195 cases within competence in 2019 were in the vast majority complaints about

Chart 4: Complaints per administrative authority



alleged arbitrary incidents conducted by Police officials (192 cases), while 1 detainee report concerned a Penitentiary and 2 reports the Coastguard (see Chart 4 **administration involved**). This is also due to the large number of cases in which Police itself initiates internal investigations and forwards them to the Ombudsman, as mentioned above.

The alleged arbitrary incidents in the cases within competence brought to the Ombudsman in 2019 had as main subject the following:

- Physical integrity or health infringement 105
- Racist-motivated behaviour[17] 28
- Infringement of personal freedom 23
- Illegal use of a firearm 22
- Torture and violations pursuant to 137A PC 11
- Sexual freedom violations 4
- Life infringements 2

(see Chart 3, Breakdown of cases by **thematic category**). In comparison to the 2017-2018 period[18], an upward trend of complaints as percentages of the total complaints pertaining to the right of physical integrity (53.4% vs.

17. or discriminatory

18. See report of the National Mechanism from 9.6.2017 - 31.12.2018 pp. 21, 23 https://www.synigoros.gr/?i=human-rights.el.files.585783.

50%) is reported, while racist-motivated behaviour increased both as a percentage and in absolute numbers (14% and 28 cases versus 7% for 21 cases). It is also noted that the thematic categories of physical integrity or health, the protection of life and the prohibition of torture and other serious violations of human dignity (137A PC) also account for the largest proportion of cases about arbitrary incidents in 2019: 61% compared to 59% in 2017-2018.

The Ombudsman issued **case-file reports** in 73 cases in 2019. 15 out of these reports concerned disciplinary investigations that began and were completed within the year, while the other concerned previous cases. In 3 of them, the examination of the findings of the Administration and the investigation file showed that the investigated incidents did not fall within the competence of the National Mechanism for the Investigation of Arbitrary Incidents (incidents occurred outside the performance of the duties or without abuse of power by the relevant officers.)

Out of the 70 cases examined on the merits, 40 investigations were forwarded by the Ombudsman to the Administration to be supplemented, while 30 investigations were considered not to require supplementary action, except for general observations made by the Mechanism on conducting investigations in similar cases.[19] The fact that in more than half of the administrative investigations examined on the merits (57%), the Independent Authority has requested supplementary investigation in order to meet the criteria of an impartial and in-depth inquiry, highlights the importance of the institutional dialogue between the Administration and the Ombudsman as an external and independent Mechanism that can contribute to the substantial improvement of administrative investigations.

Any deviation of the Administration from the conclusive part of the Ombudsman's findings, is allowed subject to specific and thoroughly justified reasoning. In 2019, **there was no deviation from the findings** of the Ombudsman, except for three cases[20]. This willingness to cooperate with the Mechanism is promising to upgrade administrative investigations.

Two observations shall be made on the merits of the investigations examined by the Ombudsman in that year:

As for the **type of investigation**, as a Preliminary Administrative Inquiry (PDE)

19. For the large number of investigations on the use of a firearm among them, see relevant theme.

20. That the Ombudsman has sent back again to the Administration due to insufficient statement of reasons.

or an Administrative Inquiry Under Oath (EDE), we observe that the PDE is the overwhelming rule of ELAS investigations, except for investigations carried out into the use of a firearm, for which the law requires in every case an EDE to be carried out[21], also for a small number of cases of heavier misconduct (life infringements, torture) and cases where criminal proceedings are brought against a police officer, in which case the PDE is converted into EDE (F. 259684, 236639 etc.).

When referring to **sanctions** proposed in the administrative investigations examined, there has first to be clarified that the punitive function is in principle linked to criminal punishment, which is distinguished from disciplinary sanctions that should be adequate, that is proportionate to the misconduct, aiming at restoring the legality in the operation of the administration. The ECtHR maintains in its case-law that shortcomings in the adequate disciplinary treatment of those held liable for a disciplinary offence does not prevent the recurrence of similar phenomena in the future[22]. The number of disciplinary cases completed by the Administration, from the initiation of the National Mechanism to the present day, does not allow safe conclusions to be drawn on the consistency of the disciplinary jurisdiction over those found to have committed disciplinary offences, mostly because the possibility of suspending disciplinary investigation in the event of a parallel criminal trial, even at the stage of a preliminary criminal investigation[23], is applied frequently. A recent legislative amendment introduced the obligation to inform the National Mechanism of the disciplinary decision of the Administration, [24] an arrangement that will contribute to gain full insight in the future.

Following these clarifications, it is noted that sanctions are proposed by the conductors of the PDE or EDE in 10 out of the 73 cases examined in total by the National Mechanism in 2019: in 5 cases fines are proposed, in 1 reprimand is proposed, in 1 fine and reprimand are proposed, in 1 dismissal is proposed and in other 2 cases dismissal and suspension to the police officers involved are proposed.

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21. Law 3169/2003

22. ECtHR Judgment Sidiropoulos and Papakostas vs Greece, 25.4.2018, etc.

23. On this phenomenon, which is not consistent with the principle of the independence of disciplinary proceedings, a proposal made by the National Mechanism to clarify that this exceptional possibility to suspend disciplinary proceedings cannot be exercised prior to an order fpr criminal prosecution is issued, was recently accepted, see relevant section 7.2 of the present report.

24. N.4662/2020 Article.188.

The National Mechanism, in 1 of the above cases, pointed out that the minor amount (30 euros) of the fine imposed to 2 police officers raises the question of obvious disproportion to the specific disciplinary misconduct of the transfer of a detainee in a way that affected his personality and dignity **(F. 258547)**.

It is noted that in the vast majority of cases, the Administration's internal investigations recommend filing invoking that the resulting incidents constituting disciplinary misconduct have not been proven. There seems not to be a different outcome even when administrative investigations are ordered following complaints to international organisations. It is characteristic that following complaints made by detainees of mistreatment and/or torture to the Council of Europe's Committee against Torture on its visits to Greece in 2018 and 2019, there was an immediate response from ELAS initiating internal investigations. In the three cases that were completed in 2019, however, the conductors conclude that there is no disciplinary liability for police officers.

One of these investigations was forwarded back by the National Mechanism for supplementary investigation (**F. 252323**, mistreatment of a minor by police officers in the area of Evros), and in the other two the National Mechanism submitted alongside with its findings general comments on police practices in relation to the treatment of detainees and the identification of evidence (**F.255579** and **F. 268097** police cells in Thessaloniki).

It should be noted that according to the ECtHR an effective investigation shall not be judged by the specific result occurred but by its ability to produce results, i.e. ascertaining of the circumstances, identification of the perpetrators and their responsibility[25]. The shortcomings of the internal investigations examined in 2019 are analysed in the sections below in this respect, in order to be fortified with more guarantees of effectiveness in the future.

With regard to the cases still pending, the Ombudsman in a letter to the Minister of Citizen Protection in August 2019 on administrative investigations that have not yet been completed and forwarded to the National Mechanism, pointed out that prompt completion of an internal investigation is important for the credibility of the disciplinary system. In the same letter,

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25. *Decisions of* ECtHR *Konstantinopoulos vs Greece, 22.11.2018, Makaratzis vs 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."*

the Ombudsman re-submitted[26] its proposals to enhance the effectiveness of the National Mechanism for the Investigation of Arbitrary Incidents, in order to enable full use of the Ombudsman's independent investigation as for allegations of arbitrariness. The Ministry of Citizen Protection responded on both of these issues, as detailed in the relevant chapter of this report on legislative and other amendments on the Ombudsman's proposals.

26. See Annual Report 2017-2018 EMIDIPA p. 85.

3

Findings per thematic category of cases

3. Findings per thematic category of cases

The cases that the Ombudsman examined in substance in 2019 led to certain findings within the relevant conclusions of the National Mechanism, depending on the issue. The main points of these remarks are briefly mentioned in this section, starting from the basic classification of the incidents of arbitrariness in Law 4443/2016, and following with analysis by topic.

In particular, on the alleged violations of personal liberty, cases of threats, personal search, arrests, policing of demonstrations and push-backs are examined.

The cases of Article 137A of the Penal Code (torture and other serious violations of human dignity) are separately analyzed, as provided for by Law 4443/2016, due to the special contempt for the corresponding disciplinary offenses.

There follows an analysis of cases involving allegations of offenses against life, physical integrity or health during arrest, detention and all kinds of police operations. These cases, as aforementioned in the statistical assessment of the year, account for more than half of all allegations.

The use of firearms constitutes a separate thematic category of cases, with their specific characteristics, as well as behaviors that involve racist motives or constitute discrimination.

3.1. Personal Freedom

Threats

Threatening falls within the jurisdiction of the National Mechanism for the Investigation of Arbitrary Incidents, because it constitutes an infringement of the individual's personal freedom. The case of police abuse is apparent when the police officer invokes this capacity or public authority in threats made in the context of a private dispute.

In a Preliminary Administrative Inquiry (PDE) conducted for a case where a police officer allegedly threatened his ex-wife with targeted and repeated

police checks, therefore abusing his status, the investigator proposed his disciplinary acquittal, accepting his claim that he was speaking to himself without addressing his ex-wife. Also, the inquiry did not find any actual conduct of police checks. The Ombudsman noted that a threat does not require the use of force or an illegal act or omission, but *"it may be carried out in any manner, for example verbally..."*[27]. Regarding the allegation accepted by the PDE that the police officer was speaking to himself while drawing away, the Ombudsman pointed out that for the objective nature of the threat (Article 333 of the Penal Code) both theory and case law accept that *"the threatened person is not required to be present, as long as he is aware that the threat is directed at him and has caused him fear or concern."*[28] The referral of the PDE report by the National Mechanism for further inquiry was also based on the omission of witness examination (*see the relevant section on commonly identified procedural shortcomings*).

Personal search

Allegations examined in 2019 by the National Mechanism with regard to personal searches raised issues of violation of the principle of proportionality and therefore unlawful and culpable violation of the personal freedom of the people stopped and searched by police officers.

The principle of proportionality and the legal requirements for search of persons were first raised in a case in which police officers in Crete conducted a search to a driver inside the patrol car instead of bringing him to the Police Department and claimed that this was proposed by the driver himself **(F. 241528)**. The PDE acknowledged that the purpose of the search conducted by the police officers was to find illegally possessed items and drugs, a belief that was formed and reinforced during the stop and search, and also acknowledged that *"those who were searched never mentioned in their affidavit that their honor and dignity were violated during the search, but instead felt that the search was excessive for their person and stated that they felt puzzled as to why this occurred to two young persons and in particular students..."*. The Ombudsman pointed out that even if serious suspicion of a criminal act was accepted and even if the notion that the proposal of a per-

27. See Charalampakis, No. id. p. 1366. Similarly, Margaritis M., 2009, *Penal Code - Interpretation - Application*, P.N. Sakkoulas, p. 900.
28. See Charalampakis, No., 2014, *PENAL CODE - INTERPRETATION BY ARTICLE*, 2nd vol., Nomiki Vivliothiki, p. 1367.

sonal search as a less onerous measure than arrest was made by the driver himself was considered to be proven, although this is not confirmed by the citizens' testimonies, it is not justified why the omission of bringing the individuals to the Police Department for further inquiries was not assessed in the disciplinary proceedings, since it was deemed that there were serious suspicions of committing a criminal offence.

Furthermore, the Ombudsman pointed out that non-compliance with the substantive and procedural requirements in Presidential Decree 141/1991 for personal searches is not a matter of free will of the parties and constitutes a violation of personal liberty. 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[29]. The Hellenic Police complemented the investigation, according to the Ombudsman's file report. In the complementary police report, the reasons that led the leading police officer to escalate the stop and search of the vehicle and to conduct a personal search on the driver were deemed valid, however, the allegations he used to justify not bringing the persons to the Police Department in order to carry out the personal search in a closed and isolated area instead of inside the police vehicle, in accordance with the terms of the law, were rejected as objectively unfounded due to non-compliance with the provisions of Article 96 par. 3 and 4 of Presidential Decree 141/1991. He was therefore found guilty of committing a disciplinary offense for which the lower disciplinary sanction of a fine[30] is provided, and was called to an apology.

Also in Crete, in a second case of a vehicle check, in which the involved police officers denied that they conducted a personal search on the driver (*"due to the driver's act/behavior..., i.e. non-compliance with the patrol signal, in combination with the area of the inspection, judging the behavior as suspicious, proceeded to a vehicle search with increased self-protection measures"*), the Ombudsman noted that the records of the police officers regarding the conduct of the inspected individuals, both during the reported non-compliance with the original signal and also during the search pro-

29. According to Article 96 par. 4 of Presidential Decree 141/1991, police officers during investigations must ensure that the individual submitted to personal search or the owner of the area or object under search are not unjustifiably disturbed and that their personality is not violated, to the extent that this is possible.

30. Specifically for violation of Article 13 par. 1 subpar. κα' of Presidential Decree 120/2008.

cess, do not reveal individualized suspicions of a specific criminal act based on concrete evidence required for the personal search and for bringing the individuals to the Police Department following a traffic control. It is neither confirmed by the testimonies of the inspected individuals, who stated that they did not hear the initial signal in all their affidavits, that they denied the search nor did they react to it and they were polite towards the police.

Moreover, the question of one of the inspected individuals about the name of the head of the police team does not in any way constitute disobedience or lack of cooperation, but instead constitutes a right to be informed with the collateral obligation of the police officer to reveal his name, along with his service status, as is the case for all civil servants.

Finally, the reference to the area of inspection is not without question a reason for systematic and thorough searches of persons, unless there are reasonable suspicions of a crime being committed by a particular person. In particular, the high level of criminality in a particular geographical area obviously allows for the escalation of policing and police intervention when any individualized indication emerges, but not for the treatment of all bystanders as prima facie suspects, as citizens are not obliged to justify their presence in a public place to a certain *"legal"* purpose.

In this sense, an inspected individual's generally *"negative behavior"* and reluctance to cooperate is related to the degree of conformity and cooperation of the person, and although it may be freely assessed under the current criteria of social decency, it is not sufficient to serve as the ground for serious suspicions of a criminal act, capable of legitimizing a search, nor can it be considered, in itself, a reprehensible act, as long as it does not exceed certain limits, but a search shall have to at least take into account concrete indications concerning the inspected individual (i.e. his behavior, the appearance of his vehicle, etc.), in a way that is fundamentally individualized **(F. 242957)**.

The internal police investigations findings on personal searches in 2019 did not all lead to a motion for exemption from disciplinary liability. In a case of airport checks and infringement on the physical integrity of the inspected person, the National Mechanism considered that the PDE report which proposed to sanction the police officer involved was justified **(F. 265522)**.

Finally, the Ombudsman, in a case of stop and search by police officers without uniforms in a city in the Region of Eastern Macedonia - Thrace, had the opportunity to address the Hellenic Police with the general observation that prior notification of the police officers' identity to the citizens is able to

exempt the Hellenic Police from most of the counterclaims and allegations about the stops and searches carried out in police preventive operations, pointing out the need to fully comply with the transparency requirements of the relevant decree[31] **(F. 244536)**.

Arrests

Suspicions based on the individual's behavior with regard to the preventive identity checks of individuals brought to the police station and the treatment during the arrest were the subject of the findings of the National Mechanism in the relevant disciplinary investigations examined in 2019, in terms of violation of legality and the principle of proportionality with regard to the restriction of personal freedom.

(a) As per the legal conditions, it is noted that the arrest of a citizen who holds evidence of his identity is provided in the event that his conduct and not just the place, time and circumstances raise suspicions of a crime[32], as provided by Article 74 par. 15 subpar. θ' of Presidential Decree 141/1991[33].

The Ombudsman noted that the vague reluctance to cooperate, negative attitude, etc. does not establish reasonable and individualized suspicions of a specific criminal act based on specific evidence and legitimizing the decision of the head of the inspection team to arrest the individuals. Also, mere presence in a certain place constitutes a right and does not constitute in itself an objective indication of engagement in a criminal offense since

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31. Article 7 par. 3 of Presidential Decree 538/1989 (A'224), according to which: *"Police officers wearing civilian attire are obliged to declare their status and display their police credentials when they exercise their duties"*.

32. Article 74 par. 15 subpar. θ' of Presidential Decree 141/1991.

33. On this provision, the Ombudsman has long expressed (see Report on: "Legal requirements for prosecutions and police investigations", https://www.synigoros.gr/resources/docs/por_16024_2002_da.pdf) the opinion that "*According to this provision, the display of an ID card should, in principle, exempt the inspected person from being arrested for further identification purposes, since arrests are only permitted if a behavior (and not just the place, time or circumstances) raises suspicions. (...) The police is indeed competent to investigate whether someone should be prosecuted, albeit it is obliged to do so in the least invasive way, i.e. without limiting (through arrest) his personal freedom. Until the desired speed of identification becomes technically feasible, the police must only record individuals' identities (in any way proven), unless there are reasonable suspicions of a criminal act*".

citizens are not required to justify their physical presence in a public place[34] with a specific legal purpose. In the light of Article 5 par. 2 of the ECHR on the protection of personal freedom and the provisions thereof, restrictions of liberty are lawful only if they leave no room for arbitrariness on the part of the police authorities and the individual may anticipate infringement on his freedom as a possible consequence of his/her own specific action **(F. 241528)**.

By referring a PDE report on the transfer of individuals to the Police Department following checks in a vehicle, the National Mechanism pointed out that the display of an ID card should, in principle, exempt the inspected person from being arrested for further identification purposes, since arrests are only permitted if a behavior (and not just the place, time or circumstances) raises suspicions of committing a criminal offense. In the absence of individualised suspicions, the arrest cannot be legitimized by the non-operation of the electronic platform for the verification of the judicial profile of the inspected (existence of prosecuting documents), since the inspected brought evidence proving their identity **(F. 242957)**.

The Mechanism found that there is no legal ground for arrest when the police invokes videotaping police action during a public protest (in the Region of Ionian Islands, in 2018, **F. 250375**). Quite rightly, on the other hand, the investigator of another Administrative Inquiry Under Oath (EDE) assesses and justifies the view that videotaping police action, as proof of an allegation of excessive violence, does not constitute an illegal action that would justify the use of force by police officers **(F. 236970)**.

The National Mechanism also pointed out that the EDE file for the arrest and injury of a musician in a central square in Attica included police officers' affidavits indicating that that the arrested foreigner was known to the police, which leaves room for questioning their alleged impartiality during the police check **(F. 234634)**.

It was also noted that in a dispute between individuals, arresting citizens becomes problematic without a prior official complaint is filed, which, according to the prevailing view, is a requirement for the arrest for crimes prosecuted upon complaint[35]. **(F. 253320)**.

34. Papaioannou Zoi, *Police Law, 2nd edition,* p. 355-356.
35. See Sevastidis Ch., 2015, *Code of Criminal Procedure (interpretation by article)*, Sakkoulas Publications, Athens - Thessaloniki, p. 3258.

b) Regarding the treatment during arrest, the following were noted:

- The National Mechanism considered the lack of notification of the rights of the three citizens who were brought to the Police Department after an anonymous telephone complaint which identified them as perpetrators of theft and for which a previous sworn complaint had been filed against unknown persons, as problematic. The Ombudsman noted that an arrested person as suspect during the police investigation retains, among other things, the right to have his rights explained to him by the interrogator, as explicitly provided by the combination of Articles 99A and 103 of the Code of Criminal Procedure, namely: a) the right to appear with a lawyer, b) the right and the conditions for accessing free legal advice, c) the right to information about the accusation, d) the right of interpretation or translation and e) the right to remain silent **(F. 250692)**. The Mechanism stated that the same police inquiry also omitted to investigate whether it was necessary to handcuff the theft suspects, As wellas their allegations that they remained handcuffed in the Police Department, and they had their shoes and personal belongings removed, i.e. whether or not they had appropriate treatment as detainees **(F. 250692)**.

The issue of violence and injuries against arrested persons was raised in the extreme case in which the investigated police officer allegedly hit a citizen on the head, after first leading him in a police vehicle (paddy wagon) handcuffed, causing drilling to his central drum. The National Mechanism referred the PDE report, noting, among other things, lack of evidence, such as entries in the Incident Book of the relevant Police Department, contradictions in the relevant testimonies regarding the need for applying means of restriction, given the age and weight of the arrested, but also lack of justification for his six-hour detention in a paddy wagon before being arrested, which in itself is a problematic treatment **(F. 250375)**.

In another case, the use of force to get the arrested person into the patrol car led to her complaint of a left shoulder injury, according to a public hospital certificate. Examining the completeness of the relevant PDE, the Ombudsman had the opportunity to reiterate that the burden of proof for the causes of injuries lies with the police for the persons under its control[36], as

36. *"If a person who is in good health is detained [or put under control] by the police and is then found to have sustained physical harm, the state is obliged to provide reasonable explanation for the causes of the injury, whereas failing to do so raises issues under Article 3 of the* ECHR*".* See 1. ECtHR, 18th December 1996, Aksoy v. Turkey, 2. ECtHR, 13th December 2005, L.M. v. Greece, 3. ECtHR, 24th May 2007, D.Z. v. Greece.

well as that the duty of finding witnesses lies with the disciplinary investigator **(F. 253320)**.

Following the arrest of three foreigners during a police check of an intercity travel bus just outside a town in Epirus in order to verify the authenticity of the documents permitting their stay in the country, the Ombudsman found that it was common police practice to bring people to the police station for document verification without recording the incident and its duration, if found that a recent check had taken place. of their detention constitutes an administrative practice, as, if it is found that they have been recently checked, no registration is made in the Incident Book. The Ombudsman as a general observation, recommended to the Police to use electronic technology in police vehicles so that patrol teams can cross-check any documents and evidence on the spot and to involve police officers of the local aliens division for the purpose of verification of residence documents **(F. 249150)**.

Demonstrations

The obligation to conclude whether and where disciplinary liability lies in investigations regarding mass protests cannot be disputed. According to the ECtHR case law, an administrative inquiry, even in the context of armed conflict, is effective "in the sense that 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"[37] **(F. 242621)**.

In the case of an injury of a protester outside an embassy building in Athens in 2018, the relevant PDE considered the police's stance defensive and the use of mild means as necessary in order to repel the attack and preserve their own and the embassy's safety. However, the Ombudsman pointed out **(F. 247416)** that, as accepted by the case law of the ECtHR, the procedural obligations arising from Article 3 of the ECHR show that even when the events to be investigated take place in the context of generalized violence and the investigators are facing obstacles and limitations that require the use of less effective investigation measures or delays, this Article requires that measures be taken to ensure that an independent and effective investigation is conducted. In fact, the Court explicitly accepts that Article 3 (as well as Article 2 of the ECHR) applies in difficult security conditions, even in armed con-

37. See Al-Skeini et al. v. England, 7.7.2011, para.166.

flict. The investigation must be thorough and this means that the authorities must make a serious effort to find out what happened and not rely on hasty or unfounded conclusions in order to close the investigation[38, 39].

The Ombudsman noted that the assessment of often conflicting testimonies is a common burden in the context of a PDE and, if there are reasonable doubts concerning the existence of disciplinary liability, this should be pointed out and justified as a guarantee of impartiality of the investigation **(F. 242621)**. For this reason, the relevant administrative inquiry should not be based solely on police officers' testimonies and should not fail to include eyewitnesses on behalf of the protesters **(F. 247416, F. 242621)**.

Regarding the conflicting testimonies between police officers and protesters, which lead the administrative inquiry investigator to doubts about the exact causes of the tension, the Ombudsman noted (demonstration in Thessaloniki in 2017) that the testimonies of both the security measures supervisor and the public order measures supervisor did not help to clarify the cause of the tension, because both testified that they were *"behind the squads"* at a distance of about 40-50 meters **(F. 235596)**.

The Ombudsman noted that crucial evidence should in any case include the recorded discussions between the dispatched police forces in the protests and the Radio-telecommunications centre **(F. 235596, F. 247416)**. Indeed, in another case, the calls to de-escalate the tension and the attempt to mediate between the police and protesters gathered in Athens were included in the investigation, based on the detailed recorded conversations of the police with the R/T centre **(F. 242621)**.

Any recorded material from cameras, traffic policing or other, regarding the incidents, would also contribute decisively to the formation of a clear image for the created tensions **(F. 235596, F. 255601)**. The file of the administrative inquiry should also include copies of the Book of Offenses and Incidents (VAS), as well as copies of the official reports of the units involved **(F. 247416)**.

The failure to identify the culprit for the injuries is a common ground in cases of protests. In a case where the injury perpetrator was not identified, as no police officer recognized the police officer shown in the relevant photographs, the Ombudsman noted, however, that in two police officers' testimonies, his participation in one of the two squads involved in tackling demonstrators was identified *"by the symbol on his shield"* **(F. 235596)**.

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38. See MOC et al. v. Romania, 17.9.2014, para. 319, 325.
39. See Cilici v. Turkey, 27.11.2018, para. 33-28.

In the same case, despite the existence of a photograph showing the police officer raising the baton in front of the injured person and his identification as the perpetrator of the injury by 4 civilian witnesses, the EDE investigator ruled that *"his injury, however, cannot be attributed to a police officer's act, as, apart from the testimonies of the witnesses proposed by the complainant, this is not mentioned by any other third-party witness."* This questioning of the credibility of the private witnesses proposed by the complainant, who took part in the protest and were eyewitnesses to the incident, undermines the necessary impartiality of the EDE. ECtHR case law, which requires equal distancing by the administrative inquiry investigator in terms of assessing the reliability of the allegations of the witnesses proposed by the complainant, the complainant himself and the police officers involved, is pointed out[40] **(F. 235596)**.

When the infliction of physical injuries is proved not only by photographs, but also by a public hospital medical certificate provided by the complainant, its evaluation should not be omitted in the context of a PDE or EDE, according to the ECtHR case law in Greek cases[41]. In order for an administrative inquiry to be considered "thorough", it must include a medical assessment of the causes of the injury and an assessment of the medical findings in conjunction with the allegations of the complainant, which can be done by having the physician who examined the complainant testify in the context of the EDE **(F. 235596)**. An investigation in which the testifying physician does not appear to have been asked about the way in which, according to his expert assessment and experience, the injuries were probably caused, is not complete **(F. 255601)**.

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40. ECtHR, 26.4.2018, Andersen v. Greece, par. 61*: "By deeming the complainant's version, but not the police officers' version, as subjective, the authorities to which the investigation was assigned, applied different criteria when evaluating the testimonies. However, the Court considers that the credibility of the police officers' testimonies should have also been assessed, as the inquiry was aimed at determining whether the police officers should have been the subject of disciplinary penalties"* (Zelilof v. Greece, no. 17060/03, § 60, 24th May 2007, and Ognyanova & Choban v. Bulgaria, no. 46317/99, § 99, 23rd February 2006).

41. The ECtHR, in a case of a hospital certificate medical findings' non-evaluation with regard to the complainant's allegations of abuse, notes that *"this document clearly shows that the complainant went to the hospital …on… immediately afterwards…, as soon as he was able to act in order to gather evidence. Under these circumstances, the Court considers that the medical certificate should have been carefully evaluated by the authorities to which the investigation had been assigned"* (see ECtHR, 26.4.2018, Andersen v. Greece par. 61).

Injuries or health risks are also reported in protests along with the use of tear gas. In an older case, the Ombudsman had requested in 2018, based on the testimony of a photojournalist at a demonstration in Athens, to expand the investigation into whether tear gas was used with a direct shot gun, and received 17 months later, in 2019, the completed investigation, the findings of which are pending **(F. 238508)**. In 2019, it received the file of a PDE regarding the use of tear gas in a protest rally in 2018 in Athens. The use of tear gas *"of the mildest form",* despite the firm directives of the Attica Police Headquarters (GADA) Operational Center, is considered in the PDE report as *"imposed as the only means of dealing with the attackers against the police forces"*. In the police officers' testimonies, it is mentioned that two police officers had been thrown down and were being hit by the crowd and injuries on both sides had to be prevented. The report also states that *"since it was not possible to communicate with the Headquarters/*GADA *and the delay would on one hand endanger the front lines of the Riot Police barrier and on the other hand the disruption of the barrier, resulting in individuals passing through the building with unpredictable consequences"*. The Ombudsman does not substitute the competent authorities in their operational judgment during the exercise of their duties. It considered the PDE report to be justified in principle, as it adopts the criterion of necessity, it refers in detail to the exhaustion of the moderate means, to the risks and the specific conditions that imposed the measure and this analysis is reinforced by all the evidence. It is noted, among other things, that relevant testimonies were received from the directly involved police officers, the security supervisor and the head of the unit that gave the order to use tear gas and the police officer who shot the tear gas. Regarding the use of tear gas or other means against protesters, the ECtHR requires a specific legal framework and the cumulative occurrence of the criteria of necessity and suitability, based on the behavior of the specific protesters[42]. However, the Ombudsman referred the investigation back to be supplemented, because it should have included eyewitnesses on behalf of the protesters **(F. 242621)**.

As for the manner in which the tear gas was used and the relevant injuries of the protesters that were present, the inquiry does not always lead to

42. See Cilici v. Turkey, 27.11.2018, par. 32-33, 37-38 (concerning rubber bullets) The Court ruled that Article 3 of the ECHR requires that the use of means and methods be permitted by law, but also that their scope be limited by provisions of guarantees and safeguards. It also examined whether the use of force was, in that case, an appropriate response under the circumstances and, on these criteria, ruled whether the investigation was thorough and effective.

the clarification of the circumstances and the disciplinary liability and the Ombudsman maintains a strong reservation about the inability to draw safe conclusions, insisting that the use of tear gas, when absolutely necessary under the circumstances, should be done under the safest possible standards and under strict control in order to prevent any health risks for everyone involved, citizens and officers **(F. 257888)**.

In a PDE that was conducted for tear gas injuries in the case of a barrier formed by police buses in order to block the access of citizens to a central street in Athens in January 2019, the Ombudsman pointed out that it is oxymoron that all of the police officers' testimonies converge in the description of the throwing of a middle type (powder) tear gas grenade, which was unleashed on the vehicles' roof in order to prevent protesters from climbing thereto, of eight tear gas (powder) grenades, two type 8230 tear gas grenades and two flash grenades, in a way that led the PDE to conclude that *"the use of the above means by the police forces, above the barrier of the police buses, in the direction of the crowd in front of the aforementioned barrier, an action that would justify the injuries of the above individuals at the specific points (head, elbow), does not appear to have occurred"* and, nevertheless, there were indeed injuries (burns) of protesters which required hospitalization **(F. 255601)**.

Concerning the thorny issue of tear gas use, the Independent Authority's inquiry continues into other pending cases.

Pushbacks

The National Mechanism pointed out the insufficient collection of evidence in a complaint filed by lawyers concerning unlawful pushbacks to the land borders. A PDE was ordered, which is not the rule concerning allegations of pushbacks[43], by the General Regional Police Directorate of Eastern Macedonia - Thrace in January 2019 in order to investigate *"a violation of physical integrity with a racist motive"* **(F. 255600)**.

The complainants testified that their allegation was based on a *"journalistic investigation"* by a named journalist, that he allegedly *"recorded on audio-*

43. The Greek Ombudsman, under its general competence for safeguarding legality and protecting human rights, is investigating on its own initiative allegations of pushbacks in the land frontier with Turkey. Further allegations of pushbacks since the opening of this investigation in 2017 are examined till today.

visual material". However, the report further states that *"it was not deemed necessary to receive a witness testimony by the journalist…, who, according to the witness testimonies of the lawyers, conducted research into the illegal pushbacks… which was published on 29-01-2018 in the website…, as those publications which did not contain any specific information or evidence were found on the internet by the signatory"*. Based on the above reasoning and in the absence of other evidence, the report was based solely on official assurances about the *"operational activity and practice of the Border Guard Service personnel"* and resulted, of course, in exoneration. The Ombudsman noted that, judging solely by the published material (vague indeed), the PDE investigator did not even appear to have investigated whether the journalist in question had further, not published, information. Consequently, the PDE investigator was left, by his own choice, without any capability to search for other evidence, such as, for example, name lists of the police officers or other personnel serving on the specific, crucial dates. The file was referred back for supplementary investigation.

3.2. Torture and other violations of human dignity under Article 137A of the Penal Code

The choice of the legislator to include torture or other serious violations of human dignity in the competence of the National Mechanism for the Investigation of Arbitrary Incidents by referring to Article 137A of the Penal Code[44] is explained by the particular contempt for the respective behaviors

44. According to Article 137A of the Criminal Code as in force until amended in November 2019 (see next footnote):

1. A civil or military servant whose duties involve prosecution or interrogation or investigation of criminal or disciplinary offenses or punishment implementation or custody and care of detainees, is punishable by imprisonment, if he, in the exercise of those duties, submits a person under his authority to torture for the purpose of:
   a) extracting a confession, testimony, information or statement, especially of denouncement or acceptance of a political or other ideology, from that person or a third person
   b) punishment
   c) intimidation of that person or a third person

   The same punishment applies to civil or military servants who, under orders of a superior or on their own will, appropriate such duties and commit the acts described above.
2. Torture, in accordance with the previous paragraph, means any systematic infliction of intense pain or health endangering physical exhaustion or psychological pain capa-

which, in addition to causing severe physical or mental pain, violate the core of human rights, human dignity itself. For this reason, in addition to their penal treatment, they also constitute disciplinary offenses that face the most severe of sanctions, and thorough investigation and combating such behaviors is a key issue for the security forces in a contemporary rule of law state.

The recent amendment in 2019 of the relevant article of the Penal Code[45] which eliminates the word "methodical" from the definition of torture in order to harmonize with the relevant UN Convention against Torture (CAT) is also a proposal of the National Mechanism in its previous report, based on the ECtHR ruling in Zontul case[46]. Its replacement by the word "deliberate" met with the reluctance of the Ombudsman as to whether it accurately reflects the meaning of the relevant International Convention, but it nonetheless constitutes an important step in the lifting of any interpretive doubts, so that in the future, behaviors with the intention of provoking intense pain, regardless of the causes of the perpetrator's will, shall receive the appropriate penal and, respectively, disciplinary, treatment.

In 2019, the National Mechanism issued 3 file-case reports regarding investigations of the Hellenic Police, invoking Article 137A of the Penal Code. These are cases of abuse upon obtaining a confession or other interroga-

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ble of inflicting severe psychological damage, as well as any illegal use of chemicals, drugs or other natural or artificial means, aiming to bend the will of the victim.

3. Physical harm, health damage, illegal use of physical or psychological violence and any other violation of human dignity, committed by the persons and under the circumstances provided by par. 1, unless within the meaning of par. 2, is punishable by imprisonment of at least 3 years, if not punishable more severely by another provision. The following are particularly considered as violations of human dignity:
   a) the use of a truth detector
   b) prolonged isolation
   c) severe infringements of sexual dignity
4. Acts or consequences inherent in the lawful enforcement of punishment, other legal restrictions of freedom or legal enforcement measures, do not fall under the meaning provided by this Article.

45. Article 137A was replaced by Article 2 of Law 4637/2019, A'180/18.11.2019, and the definition of torture in par. 6 is as follows:

6. According to this Article, torture means any deliberate infliction of intense pain or health endangering physical exhaustion or psychological pain capable of inflicting severe psychological damage, as well as any illegal use of chemicals, drugs or other natural or artificial means, aiming to bend the will of the victim. The concept of torture does not include acts or consequences inherent in the lawful enforcement of punishment, other legal restrictions of freedom or legal enforcement measures.

46. report 2017-2018, id., p.48

tion acts. An investigation under oath (EDE) was conducted by the Police only in one of these cases and in another the preliminary investigation (PDE) was changed to EDE only following criminal prosecution.

i. Following a citizen's arrest suspected for homicide in West Attica in 2015, he sued the police for torture and other acts of abuse (blows to the face etc.), both during his arrest and interrogation to obtain a confession for double homicide, the National Mechanism referred the PDE and requested supplementary investigation, mentioning the relevant case law of the ECtHR[47] for the burden of proof that befalls the police authorities regarding the reasonable measure of violence, as their liability is presumed in cases of physical harm to persons that are detained, arrested or generally contained by the police. In further detail, the Mechanism sated that the timely conclusion of a forensic report is an important element in order to consider an administrative inquiry as thorough and effective, as the ECtHR[48] points out. In this particular case, the forensic report, while not finding any injuries in other parts of the detainee's body, it was, however, filed 10 days after the incident. Furthermore, it is pointed out that, for the investigation to be complete, the existing affidavits on wider injuries should be assessed, also the certified photographs of the detainee taken by the Forensics Department (DEE), indicating the date, should be included and evaluated in the investigation. Finally, invoking the case law of the ECtHR[49] with regard to the evaluation of the reliability of the statements made by the complainant and the police officers involved,

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47. Zelilof v. Greece, 24.5.2007, para. 47 *"…given the serious nature of the applicant's injuries, the burden rests on the Government to demonstrate with convincing arguments that the use of force was not excessive."*.

48. The ECtHR has repeatedly emphasized the importance of a medical examination before a person is placed in custody. *"Such an examination may not only allow to determine whether the person in question can be the subject of an interrogation, but also, in the event of a subsequent allegation of a violation of Article 3 of the Convention, to "relieve" the authorities from the burden of proof regarding the origin of the established injuries"* (ECtHR, 26.4.2018, Andersen v. Greece, par. 63).

49. "In the Court's view, the administrative inquiry applied different standards when assessing the testimonies as those given by the civilians involved in the events were recognised as subjective but not those given by the police officers. However, the credibility of the latter testimonies should also have been questioned as the administrative proceedings had also sought to establish whether they were liable on disciplinary grounds" *(Zelilof v. Greece, no. 17060/03, § 60, 24th May 2007, and Ognyanova & Choban v. Bulgaria, no. 46317/99, § 99, 23rd February 2006)"* (ECtHR, 26.4.2018 Andersen v. Greece, par. 61).

the Mechanism pointed out that speculation in the PDE report about the ulterior motives of the complainant's allegations could call the impartiality of the PDE into question, if it is not specifically justified **(F. 232061)**.

ii. A prisoner in a Correctional facility filed a complaint to the National Mechanism for the Investigation of Arbitrary Incidents for torture and other violations of human dignity within the meaning of Article 137A of the Penal Code, citing that during his transfer in Attica in 2017, he was a victim of illegal and violent acts by police officers aiming to extract DNA sample from him. For the same incident, a PDE was conducted by the Police, and the Mechanism obtained it. The Mechanism referred the PDE back for completion, requesting that specific evidence be included in its file, as it found that it fell short of being a complete and effective investigation and, as a result, it does not lead to substantiated and, therefore, safe conclusions.

The Mechanism was led to the above finding, in addition to the aforementioned obligation of the detention authorities to provide a reasonable and convincing explanation as to the origin of the applicant's injuries[50], by invoking the case law of the ECtHR for obtaining genetic material[51], according to which, forced obtaining of DNA is not in itself a violation of dignity in every case, but this admission cannot constitute an unconditional concession for generalized physical abuse in favor of state authorities. For this reason, forcible obtaining of genetic material is legitimized subject to the principle of proportionality, and the decision on whether Articles 3 and 8 of the ECHR are violated or not depends on a series of ad hoc factors such as: nature and severity of the coercion, the gravity of the criminal offence, the lack of alternative, less extreme methods, the risk of causing serious physical harm, the existence of procedural guarantees and, above all else, the inhuman and degrading treatment[52].

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50. Aksoy v. Turkey, ECtHR, 18.12.1996.

51. Saunders v. UK, 17.12.1996. Also Shannon v. UK: "The right not to incriminate oneself is primarily concerned, however, with respecting the will of an accused person to remain silent. As commonly understood in the legal systems of the Contracting Parties to the Convention and elsewhere, it does not extend to the use in criminal proceedings of material which may be obtained from the accused through the use of compulsory powers but which has an existence independent of the will of the suspect such as, inter alia, documents acquired pursuant to a warrant, breath, blood and urine samples and bodily tissue for the purpose of DNA testing".

52. Jalloh v. Germany, 11.07.2006: "The particularly intrusive nature of such an act requires a strict scrutiny of all the surrounding circumstances. In this connection, due re-

Furthermore, the Mechanism also pointed out that the PDE failed to examine the compliance with the conditions set by Article 200A of the Code of Criminal Procedure for drawing an expert's report which includes obtaining and analysis of deoxyribonucleic acid (DNA)[53], despite the fact that such violations raise the issue of absolute nullity of the expertise procedure, as they concern the defense of the accused and the exercise of his rights[54]. In the conducted PDE, the Mechanism also found omissions in the collection and evaluation of the available evidence (absence of witness testimonies, while it appears that there were witnesses that heard what was happening and also eyewitnesses, omission of summons for the complainant and for the detention officers to testify), while the PDE limited itself exclusively to the written statements of some of the investigated police officers. Moreover, the relevant report did not specify the reasons for the transfer of the detainee from his place of detention to a place not inspected by the video surveillance system. Also, in spite of the reports of the prison officers that the detainee was injured and the findings of the hospital doctors in Attica who examined him, the PDE report evaluated the above findings and concluded that the allegations of the complainant cannot be confirmed, because the medical findings mention head injury and hematoma, but not fracture **(F. 237463)**.

iii. The case of the mistreatment of a minor who was brought to a Police Sub-Directorate in the Region of Eastern Macedonia - Thrace as a suspect of theft in 2015, resulted in a PDE that was originally dismissed by the Hellenic Police. The dismissal was revoked and an EDE was ordered following an ex-officio preliminary investigation by the Internal Affairs and the criminal prosecution of a police officer for torture and other violations of human dignity under Article 137A of the Penal Code. The National Mechanism received the Police EDE report and a relevant acquittal decision of the competent Criminal Court. The Mechanism referred the initial EDE back for completion, taking into account, in addi-

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gard must be had to the seriousness of the offence in issue. The authorities must also demonstrate that they took into consideration alternative methods of recovering the evidence. Furthermore, the procedure must not entail any risk of lasting detriment to a suspect's health".

53. See Article 200A, 204, 192, 96, 97 of the Code of Criminal Procedure.

54. According to the domestic law, the ECHR and the International Covenant on Civil and Political Rights, as explicitly defined by Article 171 par. 1 subpar. δ' of the Code of Criminal Procedure and affirmed by the case law of the Supreme Civil Court in Plenary Session (see Areios Pagos Plenary Session 1/2017).

tion to the ECtHR case law[55] for providing convincing explanations by the authorities on how injuries were inflicted on a detainee, Article 48 of Presidential Decree 120/2008 and the case law of the Supreme Administrative Court (Conseil d' Etat) [56] for the binding effect of a criminal court's ruling. Based on the above, the Mechanism considered that the arguments of the EDE report do not in any way serve the principle of proof "beyond any doubt" set by the ECtHR, nor do they refer, alternatively, to irrefutably strong evidence as to the facts. Subsequently, the Mechanism referred the complemented EDE for a second time back to the Police, as it found that its remarks were not taken into consideration, while, according to Article 56 of Law 4443/2016 *"a deviation from the Ombudsman's report findings is* only allowed subject to specific and thoroughly justified reasoning ".

In further detail, the report of the complemented EDE was referred back because it proposed dismissing of the case without substantiating the proposal with collected evidence or facts, but instead it stated the investigator's reasonable questions, doubts and speculations regarding the conduct due to have been exhibited by the minor's parents. In order to dispel those doubts, the report does not evaluate the police officers' testimonies, does not provide a document of the hospital, which states the serial number of admission, which was requested by the Mechanism in its first report and unjustifiably ignores the Mechanism's remarks regarding the irregularities identified in the procedures for the arrest and interrogation of the minor **(F. 243154)**.

In conclusion, for all 3 cases above, it is remarkable that the National Mechanism had to invoke the obligation of the police authorities to justify how

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55. In the context of such a detailed investigation for the violation of Article 3 of the ECHR, under the ECtHR M.G.A.A. v. Greece ruling, on 18.1.2007, case no. 25771/03, in spite of the irrevocable decision by the Five-Member Athens Court of Appeal, which acquitted a police officer that stood trial, the ECtHR concluded that the Court's ruling *"does not reflect any serious effort to discover what had really occurred in the police station on the day of the incident"*. As a result, the Greek State did not adequately prove that the complainant's injuries and, in particular, the injuries to the face and the drilling of the drum, were caused in any other way and not - entirely, mainly or in part - by the treatment he underwent under the control of the police, as *"the applicant was examined by a State doctor not later than an hour after he had left the police station and that there is nothing in the case file or the parties' submissions to suggest that the injuries described in the medical reports had been inflicted either before or just after his stay at the police station"*.
56. Conseil d'Etat, 2290/2014.

the injuries of the individuals in their sphere of responsibility came to be. Therefore, the relevant ECtHR case law has not yet become common ground in administrative inquiries. Also, despite the long duration of the investigations for violations of Article 137A, it is difficult to reach fully justified and safe conclusions on the disciplinary liability of the police officers involved.

3.3. Protection of life

In the center of Athens, in 2018, following a command by the Radio-communications Center, police staff intervened in a reported attempt of robbery and used force in order to restrain and handcuff an injured person, subsequently taken to the hospital, where he was pronounced dead **(F. 251366)**. The Mechanism, after receiving the documents by the competent Directorate regarding the conduct of a PDE for the specific case, requested specific evidence. Much of the evidence was sent, following a second request by the Mechanism, almost two months after the initial document. The initially ordered preliminary (PDE) investigation was converted to an investigation under oath (EDE) and the EDE report was then handed to the Mechanism. The EDE report included the information that the police officers involved were summoned to an apology before the investigating judge for the crime of fatal physical harm by complicity.

The Mechanism, after examining the case file, found that there was an initial delay in the preliminary investigation which was overcome when it converted to EDE. The Mechanism commented on the EDE procedure that: a. it was carried out in due time, complying with the provision of Article 20 par. 14 of Presidential Decree 120/2008, b. the available evidence was duly gathered and assessed under the existing rules of disciplinary law with the appropriate reasoning, making use of the general principles of Penal Law, and c. the procedure of the administrative inquiry (as found by the report and the documents of the EDE case file) was carried out in accordance with the provisions of Presidential Decree 120/2008 and the general principles and rules of Penal Law that may apply, adapted to the nature of disciplinary law, while at the same time the rights of the persons under disciplinary investigation and prosecution, protected by those principles, were upheld and, additionally, the rights provided by Article 6 of the ECHR and the principles deriving thereof, in accordance with the case law of the national courts and the ECtHR, seemed to have also been upheld.

However, in addition to the above findings, which have been the subject

of widespread publicity on the internet -unknown how- the Mechanism, in order to reach these findings, made general remarks on the specific case based on principles that, according to current legislation and case law of national courts and the ECtHR, must govern the disciplinary -administrative inquiry process. Specifically, given that it concerned a case of loss of life following an incident of arrest and use of violence by the police, it highlighted the principle of the ECtHR case law, that in cases of use of lethal force or means by the state authorities and in investigations of arbitrary homicide and allegations of police mistreatment of detainees, Article 3 of the ECHR prohibiting torture, inhuman or degrading treatment and punishment, would be ineffective in practice if there was no procedure for reviewing the legitimate use of those means[57]. The obligation to investigate also arises from the provision of Article 1 of the Convention (obligation to respect the rights) on the State's obligation to safeguard rights, while Articles 2 and 3 indirectly require an official and thorough investigation into the above.

In cases concerning life, the Court consistently points out that the first section of par. 1 of Article 2 of the Convention not only prohibits the intentional and unlawful deprivation of one's life by state officials, but also requires States to take appropriate measures in the context of their internal legal order so as to protect the lives of individuals under their jurisdiction. Thus, in a decision against our country[58], *it ruled that "Serious questions therefore arise as to the conduct and the organisation of the operation. Admittedly, some directions were given by the control centre to some police officers who had been expressly contacted (…). The absence of a clear chain of command is a factor which by its very nature must have increased the risk of some police officers shooting erratically"*.

Furthermore, the ECtHR[59] has included in other violations of human dignity (similar terms to be found in the Greek Penal Code in Article 137A), among other things, the containment of a detainee by handcuffs or public exposure exceeding the extent which is reasonably necessary in order to prevent escape under the circumstances or existing indications that he might use violence or attempt to abscond.

Taking the above into consideration, the Mechanism pointed out that the report explains the behavior of the police officers during the handcuffing

57. 17.9.2014 ruling on the MOCANU & Others v. Romania case, no. 10865/09, 45886/07, 32431/08 par. 315 et seq.
58. 20.12.2004 ruling on the H.M. v. Greece case, no. 50385/99. § 68.
59. 16.12.1977 ruling on the Raninen v. Finland case, no. 152/1996/771/972, § 53-59.

and attributes its errors to shortcomings in the training of the police officers, but does not take into serious consideration the method of handcuffing and the numerical superiority of the DIAS team with regard to dealing with difficult cases and the inability to assess the arrested person's health. Moreover, given that according to ECtHR case law, the reactions of the police officers involved in an operation are examined in light of the orders and the coordination of the operation, it was deemed appropriate to point out that in the present case, the management of the incident by the Command Center could be considered as raising issues (especially regarding the training of the speakers and the handling of communications by the police officers), as it did not coordinate the staff involved in the incident so as to safeguard escorting the injured person to the hospital as well as maintaining intact the place of crime.

In another case **(F. 254614)**, in a forest area close to the border, when, during a police patrol with the purpose of locating drug dealers, the police officers responded with gun fire and mortally wounded a man, the Mechanism considered the referral of the conducted EDE back to the Police as necessary. More specifically, it pointed out that according to ECtHR case law[60] *"Article 2 of the* ECHR *imposes the obligation to protect the right to life… it also implicitly requires that a form of official and thorough investigation be conducted when resorting to coercion has resulted in a person's death"*. Furthermore, it made note of a decision[61] condemning our country, where it was found that there was a violation of the procedural part of Article 2 of the ECHR due to lack of independence and effectiveness in the investigation of a fatal injury by a police officer, as it found that the effectiveness of the investigation was affected by the actions of the police officers involved who did not safeguard the collection of evidence after the incident (the police officer who took the shot investigated the victim's body in order to find a knife, while no fingerprints were obtained from the knife), did not keep the crime scene intact and also prevented the investigation from identifying important information (such as the position of the victim's body), while noting the lack of rules and clear instructions that police officers should follow in cases such as this.

Taking the above into account, the Mechanism requested that specific evidence is examined and evaluated in the EDE report, proving that it was investigated whether the crime scene was kept intact, such as conducting additional testimonies of the police squad officers who rushed to assist, evi-

60. 07.02.2019 ruling on the Patsakis & Others v. Greece case, no. 20444/14, § 67.
61. 05.07./2007 ruling on the M.C. & R.C. v. Greece case, no. 21449/04, § 66 et seq.

dence of counting the bullets of the rifle of the deceased and of examining this weapon for fingerprints. The Mechanism also requested the investigation to include reference to the exact position of the corpse during the officers arrival at the place of inspection, facing up or down, naming the person who moved it, whether there are any regulations, standing Police orders or practices - training for maintaining the crime scene intact, for moving the weapon involved and removing its cartridge. Concerning the reasoning for the legal use of weapons, the relevant section of the Police investigation report shall, in light of the applicable legislation, indicate whether compliance with the principles of necessity and proportionality[62] was evaluated, as well as whether the use of the hunting weapon was assessed under the relevant statutory provisions (Law 3169/2003).

3.4. Physical integrity and health

Violations of those rights may occur in a lot of cases on police actions and are the subject of a large number of allegations and/or administrative inquiries. Violations of physical integrity and health may entail a prior or parallel infringement of personal freedom. The present chapter includes cases of violations of the rights of physical integrity and health presented in subcategories depending on the victim and its situation, as well as the circumstances under which the violation occurred. The main category of cases concerns detainees (including any person whose freedom of movement has been restricted ie. being brought to a Police Department or serving a sentence in a Ccorrectional facility). Another category includes the injured during a police operation or public order measures taken by the Hellenic Police during demonstrations (see above the relevant section on demonstrations in the chapter on personal freedom).

Detainees

The presentation of this category of cases includes three subcategories. The first one includes complaints filed with the Council of Europe Committee for the Prevention of Torture (CPT) during its visit, the second includes allegations of violations of physical integrity occurred in detention facilities

62. Article 3 par. 2 subpar. α' and γ' of Law 3169/2003, referencing provisions of Article 3 par. 2 of Law 3169/2003.

(whether violence was exercised by staff or other detainees) and the third includes all cases involving such violations upon obtaining a confession or performing interrogation acts.

Complaints filed with the Council of Europe Committee for the Prevention of Torture (CPT) during its visit

i. During **a visit[63] of the Council of Europe Committee for the Prevention of Torture to a Police Department in Thessaloniki**, on 04.04.2019 **(F. 259979)**, a third country national in detention complained that a helmet was placed on his head along with handcuffs which left him with torture marks, during his stay in the temporary detention area. The Committee informed the relevant Police authority of the complaint. A PDE was ordered for this allegation, which was assigned to an officer from a Police Directorate other than the one involved in the complaint, following a relevant remark by the Mechanism on the necessary independence of the investigator from the policemen under investigation.

The Mechanism expressed general remarks on the relevant PDE report and, in particular, that the recording of all persons under arrest and short term detention in the relevant Police Department's Book of Offenses and Incidents (VAS) is necessary for reasons of transparency in all police actions. Moreover, concerning the use of helmets, noting that the Police was invoking reasons of the detainee self-protection in this case, the Mechanism pointed out that there were contradictory allegations between the Police report and the relevant response of the Police Department Commander to the Committee, which was changed in later written statements. The Mechanism also expressed its general reservations about the lawfulness and the objectives that the practice of **placing helmet on detainees** (see new Article 137A of the Criminal Code) serves and addressed a recommendation that no helmet, even for private use, be placed in a detention area, temporarily or not.

ii. In the CPT report of their visit to our country during the period from 8/03/2019 to 09/04/2019, reference was made to Hellenic Police departments and, more specifically, to those within the local jurisdiction of the **Thessaloniki Police Headquarters** (GADTH), where complaints of

63. For more information on the specific visit, see the published CPT report of 09/04/2020 at https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-publishes-report-on-gree-3.

violence and mistreatment by police staff were reported to the members of the CPT delegation. The competent GADTH ordered the conduct of an EDE **(F. 268097)**. The Mechanism made general remarks on the EDE report which mainly investigated an incident concerning a detainee and her infant. The main argument of the EDE report was that the incident concerning the detainee and her infant was the only one that was investigated, as it could not investigate the individuals who filed complaints with the CPT about excessive use of police violence before and after their arrests, as well as mistreatment during their examination, because no further identification information on the complainants was recorded in the preliminary remarks document of the CPT. To this argument, the Mechanism responded with stating that the CPT delegation found medical examinations - evidence that supported the allegations and the question arises how it is possible to come across evidence in one delegation's visit, but not in the context of a police administrative inquiry.

Moreover, the Mechanism pointed out the general principle of the ECtHR case law on the vulnerable position of detainees and the obligation to carry out an independent and effective investigation in cases of allegations of mistreatment by police and other state authorities[64]. In that context, it stressed that in view of an ongoing administrative inquiry, a preemptive approach should be adopted to investigate allegations of mistreatment of detainees[65] and it lies within the investigator's duties to make all efforts to collect every piece of relevant evidence.

Violence in detention facilities by personnel or detainees

i. In a case of a **newly arrived alien detainee at a Prison Psychiatric Facility** –who remained in a **Police Department in Athens (F. 241553)** from the date of his arrest, his presentation to the court, up until his transfer to the Prison Psychiatric Facility where he would serve his sentence– there were findings of mistreatment during the police transfer i.e. he suffered physical injuries, and a relevant report was submitted by the Prison staff. The relevant decision of the Disciplinary Council, following the detain-

64. 27-6-2000 ruling on the SALMAN v. Turkey case, par. 99 and 22-11-2018 ruling on the Konstantinopoulos & Others v. Greece case, no. 29543/15 και 30984/15, § 91.

65. Reminding the relevant recommendation by the CPT following a visit to our country from 14 to 23 April 2015 (see CPT/Inf (2016) 4 part, https://rm.coe.int/-14-/1680931ad4, § 40 and 41).

ee's testimony, found no evidence of disciplinary or criminal liability. The case was dismissed and at the same time forwarded to GADA for further investigation of the detainee's allegations.

The Mechanism referred the PDE conducted by the Hellenic Police back for a second time, considering that it does not provide convincing explanations as to how the detainee's physical injuries - bruises came to be. More specifically, following the first referral, affidavits by doctors and photographs taken by the DEE were included in the PDE file. Those were only only in part evaluated in the PDE. According to the Mechanism, the reference to a Criminal Court's decision acquitting a police officer and the lack of relevant references to any police officers' responsibility for the physical injuries, do not substitute the burden lying with the detention authorities to prove how the pictured bruises were caused to the prisoner.

By invoking the relevant ECtHR case law on the responsibility of the authorities for the breach of obligations under Article 3 of the ECHR, after failing to observe or react to signs of violence against a detainee by his fellow-detainees (which were apparent) and not ensuring a safe environment[66], as well as by invoking the relevant provisions on the physical integrity of detainees and the maintenance of order and peace in detention facilities, the Mechanism yet again referred the PDE to gather evidence in order to substantiate the PDE's conclusion that the physical injuries were inflicted by fellow-detainees.

ii. **A detainee** filed a complaint about getting assaulted by police officers in Athens during 2017 **(F. 233679)**, **when he was detained, awaiting transfer to a Detention Facility in Attica**. The competent Authority ordered the conduct of an EDE for the case. The Mechanism referred the EDE back for completion, as it considered that the use of force by the police officers should be specified (regarding the complainant's containment, immobilization, handcuffing and placing a helmet on him), evaluated and justified as to how it did not exceed the necessary measure in relation to the intended purpose. The Mechanism was led to the above conclusion, because it found that the EDE report concluded that there was no racist motive in the police officers' behavior or violation of the detainee's physical integrity by them, while the photographs provided by the complainant and the DEE in the context of his arrest paint an apparently different picture, as the face injuries were obvious and, also, the testimonies by both the complainant and the police officers involved indicated the use of violence.

66. 15-1-2019 ruling on the GJINI v. Serbia case, no. 1128/16, par. 77, 87.

iii. A complainant sent an e-mail to the Internal Affairs department of the Hellenic Police for an assault he suffered in September 2018 by police officers, a patrol squad, during his transfer to a Police Department in Athens **(F. 260305)**, but also during his stay at the Department. The relevant correspondence sent by the Police to the Mechanism indicated that the complainant was arrested and a case was filed against him, which was submitted to the Prosecutor's Office, until the submission of which he was transferred and remained detained in another Police Department. For the reported incident, however, no administrative inquiry was ordered in accordance with the provisions of Presidential Decree 120/2008, and the Mechanism pointed out that no administrative investigation procedure was followed, such as a PDE or an EDE, although the allegations alluded to the commission of a disciplinary offense and the procedure of a preliminary administrative inquiry, should have been opened as provided for in Article 24 par. 2-5 of Presidential Decree 120/2008. Furthermore, the investigation carried out following the e-mail needs to be completed, as it does not appear that all available evidence was taken into consideration, such as the testimony of the second person who was in the police car with the complainant during the reported day and hour and the camera records inside the Police Department. Following the Mechanism's recommendation, the opening of a PDE was ordered by the Police, which the Mechanism monitors.

iv. A foreign national filed a complaint for abuse of power, physical harm **(F. 234634)**, and threats, with possible racist motive, during a police inspection in a square in Athens, in September 2017 (he filed a lawsuit against the two police officers involved for abuse of power, physical harm, insults and threats). In particular, he described that he was insulted and suffered excessive violence and hits in the face, both in the square and in the Police Department where he was initially brought. A PDE was conducted by the Hellenic Police for this incident, whose file showed that a case was filed against the arrested person for the same incident, with charges of disobedience, resistance, insults and threats. The Mechanism, after examining the relevant PDE, referred the report back for completion of the evidence or its reasoning, as it found that the only witnesses examined were police officers (the participants in the patrol, the officer in charge and the assistant officer in the Police Department), while no independent witnesses (other foreigners reported to be present at the incident, nearby shopkeepers or bystanders, presumably present in the square) were mentioned or sought out, and also no video material from local security

cameras of neighbors or the Traffic Police was mentioned to have been sought out. Moreover, the report did not assess the findings of the forensic report that the injuries were made *"by a blunt object"*. The lack of non-police third-party witnesses and the lack of recorded material from cameras that would have constituted objective evidence, could lead the investigator to a conclusion of no disciplinary responsibility of the officers involved justifiable only on serious doubts about the truth of the complainant's allegations[67].

v. In a case that took place in 2018 in a detention facility in **Thessaloniki (F. 254608)**, the complainant, who was temporarily detained, exited his cell on the guards' permission and, while standing in the corridor during the transfer of other detainees, he was verbally and physically assaulted by one of the police officers involved in the transfer, causing him pain in the back and the back side of the head, as well as a severe cough. The Thessaloniki Police Headquarters ordered the conduct of a PDE for this case, which was referred back by the Mechanism so as to include a list of names and testimonies by the detainees under transfer who were present in the incident.

According to the established ECtHR case law[68], when allegations of mistreatment in violation of Article 3 of the ECHR come from individuals who are detained or under police or another competent authority's control, the burden of proof is reversed and in these cases the police has to *"provide satisfactory and convincing explanations through evidence relying on real events, putting the victim's view on the incident into question"*. Based on this principle, the Mechanism referred the PDE for completion in order to provide sufficient explanations as to why the prison guards allowed the complainant to exit his cell during the time of the detainees' transfer and as to why they did not intervene so as to prevent the incident between the complainant and the investigated police officer, but also in order to provide reasons for not carrying out a forensic examination, as

67. The European Court of Human Rights has repeatedly expressed doubts concerning the independent and thorough nature of the disciplinary inquiries when those express such guesses against the complainant: *"By deeming the complainant's version, but not the police officers' version, as subjective, the authorities to which the investigation was assigned, applied different criteria when evaluating the testimonies"*. (see. cases *Zelilof v. Greece*, no. 17060/03, § 60, 24.5.2007, *Andersen v. Greece*, no. 42660/11, § 61, 26.4.2018 etc.).

68. Salman v. Turkey, ECtHR, 27th June 2000 and Assenov & Others v. Bulgaria, ECtHR, 28th October 1998.

requested by the complainant, which would have further contributed to remove the PDE investigator's doubts and reserves.

vi. In a case of an injured detainee in a Police **detention facility in Attica (F. 232460)**, the Mechanism referred the conducted PDE and its report which was sent by the competent Directorate, because it included scant evidence material, as, aside from the involved police officers' testimonies, it did not contain any recorded material from the police department's cameras, which would have helped to objectively verify the facts of the investigation.

Following the Mechanism's report and the completion of the PDE, the Mechanism found that the completed PDE included a witness testimony by a police officer who was not present in the incident and noted that there was no recording system and that there were no cameras inside the detention cells, but only in the exterior premises. The completed PDE report referred to the absence of a provision in the Detention Facilities' Technical Description for the placement of closed recording systems inside cells. After taking the above additions into consideration, the Mechanism expressed the general remark that the relevant provision regarding the camera coverage of the detention facilities' external perimeter, shared areas for detainees and the fronts of the cells, should be complemented by an explicit provision for video recording, whose material should be stored for a sufficient period of time (e.g. three months) and, in case of an individual's complaint, for even more, until the final investigation, both administrative and criminal, of the allegations.

It further found that the completed PDE followed the Mechanism's findings, that the PDE's findings of absence of disciplinary liability could only rely on serious doubts concerning the existence of the assault, due to the amount of evidence gathered, the lack of recorded material, the injuries of both sides, the testimony of only one of the three detainees etc. The reasoning of the PDE report was complemented accordingly, while the doubts about the reliability of the detainees' allegations that were prevalent in the initial report, which were not in accordance with the relevant ECtHR case law[69], were ruled out.

vii. In a police **detention facility in Attica**, a citizen complained about physical violence and general mistreatment by police officers suffered by her

69. Zelilof v. Greece, no. 17060/03, § 60, 24.5.2007, Andersen v. Greece, no. 42660/11, § 61, 26.4.2018 etc.

and the minors whom she represented **(F. 260526)**. The complainant had not filed a criminal lawsuit for the alleged treatment, in her own right or on the minors behalf. Instead, a case was filed by the Police against the complainant for the **crime of disobedience** (Article 169 of the Criminal Code). A PDE was ordered in 2019. Despite complaints having been filed by lawyers at the time of the incident and the relevant provisions of Article 23 par. 2 of Presidential Decree 120/2008, no answers to the complaints were found in the relevant case file, much less any internal administrative inquiry for violence against the lawyer and the minors immediately after the incident.

The PDE report was referred back by the Mechanism so as to complement the evidence and reasoning, as the court decision acquitting the complainant, which is the only ruling on the alleged incident, ought to have been evaluated by the report, even if it can be considered that it does not bind the disciplinary authorities with regard to the existence of or absence of facts, against the police officer involved in the PDE (as opposed to Article 48 of Presidential Decree 120/2008, which requires an irrevocable decision).

The search for the three underage aliens involved in the incident was unsuccessful, according to the PDE report, but the testimonies of 2 of the 3 minors at the time are found in affidavits before a notary which are said to have been presented by the complainant. Neither the Asylum Service employee (who was present according to all the testimonies) nor the interpreter of the Asylum Service who was examined in the Court, appear to have been searched in order to testify in the context of the PDE. The PDE report omits any mention or serious evaluation of the medical certificates with regard to the complainant's allegations, in spite of the relevant ECtHR[70] case law on medical findings and their connection to alleged acts of abuse. Also, the PDE report does not make any reference to racist motives (see relevant chapter below).

viii. Following an individual's allegation that police officers in northeastern Attica used violence against her, handcuffed and insulted her, the competent Authority ordered the conduct of a PDE **(F. 252676)**. The Mechanism monitored this PDE with regard to the use of violence and referred

70. In particular, the term "thorough investigation" used by the Court, includes, among others, the necessity of conducting a forensic examination in a reasonable time, medical speculation on the causes of injury and evaluation of the medical findings in combination with the complainant's allegations, detailed reference to the incident and the injury circumstances (see the ECtHR ruling of 26.4.2018 on the Andersen v. Greece case par.64,74).

it back for completion as to the sufficiency of the evidence that was used in order to reach the final conclusions on the basis of the allegations, as it considered that the conclusion, as expressed in the final part of the report, is not sufficiently justified, because not all potential evidence that could shed light on the allegations do not appear to have been evaluated and assessed. More specifically, the Mechanism considered the opinion that the complainant's arguments are not true, without providing further reasoning on this in the findings report, as hurting the objectivity, efficiency and fairness of the administrative inquiry, since what is real or not is up to proof, which, however, is not in fact possible, beyond any doubt, for facts based on oral testimony. In addition, given the nature of the allegations as factual, based largely on oral testimonies of the persons involved, it was deemed necessary to make use of all the objective information supplementing, confirming or contradicting the testimonies of those involved in the incident. In the same context, the PDE should investigate and report whether there were cameras in the office of the acting officer and if there were, it should make use of the material. At the same time, given the complainant's allegation that before her transfer to the hospital, she had fallen to the floor and possibly suffered from pain in the arm because of it, the PDE should have sought out whether the medical file formed during her short stay at the hospital included examinations and their results regarding her arm, and whether she had complained about it. The investigation was completed in accordance with the findings of the National Mechanism.

ix. In a case of a business inspection by police personnel in 2018, it was alleged that force was used by police personnel of a Police Department in Western Macedonia against the business owner **(F. 249150)** during her apprehension, transfer and arrest. The conducted PDE was referred back for completion by the Mechanism, which considered that in order to meet the requirements provided by Article 3 of the ECHR for the inquiry's efficiency, in accordance with the ECtHR case law[71], the operational con-

71. When a person reasonably suggests that it suffered mistreatment in violation of Article 3 of the European Convention on Human Rights (hereafter ECHR) by police or other authorities, this provision, in combination with the general duty of the Member States provided by Article 1 of the ECHR, require the conduct of an effective official inquiry. In order for an inquiry to be effective, it has to define whether the use of force by the police was justified under the circumstances, while an inquiry is thorough when the authorities make serious efforts to verify the truth, without jumping to conclusions in order to complete their investigation or support their conclusions (see ruling of 24/05/2007 on the

duct of the police officers involved in the specific incident should be investigated and evaluated as to whether it was in compliance with the provisions of the applicable legislation and the Police Regulation. More specifically, questions were raised about which of the present police officers dealt with the incident and which mild means were used to immobilize the business owner, whether violence was used for the immobilization and how did the transfer to the Police Department took place.

x. Following a letter by the Council of Europe Committee for the Prevention of Torture (CPT) regarding allegations about **a Hellenic Police special unit officer** who charged in a Detention Facility in 2018 and used force against detainees **(F. 249152)**, a PDE was conducted and the Mechanism was informed about its conduct. The Mechanism notified the competent authorities about its monitoring of the internal inquiry and requested that audiovisual material from the video surveillance system during the time of the investigated incidents be secured and included in the PDE file.

The Mechanism referred the conducted PDE and the relevant findings report back for completion, because, while it pointed out that the examination of the audiovisual material showed that no police officer used illegal force against detainees during the investigated period, the research on the audiovisual material that was sent to the Mechanism indicated behaviors and actions of police officers that raise doubts on the findings and the conclusions of the report about the facts. The National Mechanism's report recorded the time periods when those were apparent and requested that the audiovisual material is re-examined and re-evaluated, that the above recorded incidents are studied and assessed, that the individuals pictured are identified and that the findings – indications are evaluated in order to complete the PDE. It was further pointed out that no detainees were examined, because their examination within the context of the PDE was deemed unavailing with regard to the incident's investigation, and that is something that has to be re-assessed. The report requested that the examinations of eyewitnesses – victims or non-police individuals, along with testimonies of medical and nursing staff from the detention facility clinic are sought out, included in the PDE file and evaluated with regard to whether detainees were examined or transferred to the hospital. The above also include medical – forensic reports and copies from the book of injuries and the book of medical incidents.

D.Z. v. Greece case, no. 17060/03, § 54-56 and 13/12/2005, L.M. & E.K. v. Greece, no. 15250/02, § 53).

Moreover, the Mechanism reviewed the arguments of the PDE findings report and, particularly, the police officers' argument that their presence inside cells was not permitted and that no criminal prosecution was pending against them, highlighting the need to avoid stereotypes of "suppressive" logic in administrative inquiries, but also the independence of the two procedures, provided by Article 48 of Presidential Decree 120/2008.

For the establishment of the above judgments, the Mechanism analyzed the relevant ECtHR case law: on the vulnerable position of individuals under detention, the authorities' duty to protect and the obligation to provide possible explanations as to how the injuries of the detained came to be[72], as well as the principle that resorting to physical violence against a person under detention, while not necessary because of its behavior or reaction, is degrading human dignity and constitutes, in principle, a violation of the right provided by Article 3 of the ECHR[73]. The authorities must take all the necessary measures in their disposal to ensure that evidence concerning the incident[74] (including, inter alia, eyewitnesses' testimonies, forensic evidence and existing video material[75], while it accepts that the procedural part of Article 3 of the ECHR is violated when the existing relevant material has not been sufficiently examined and assessed). Finally, regarding injured detainees during a special police operation inside a Detention Facility, it noted that according to a recent Court's ruling [76] against Greece, Article 3 of the ECHR imposes an obligation on the authorities to conduct immediate medical examinations.

3.5. Use of a firearm

In most cases concerning use of firearms, the administrative inquiries findings are complete and fully justified (9 reports examined in 2019), which is explained by the relevant legislation that requires conducting an Administrative Inquiry Under Oath (EDE), without the option of a preliminary investigation, for all cases involving firearms' use by police officers. However,

72. 27-6-2000, SALMAN v. Turkey, par. 99.
73. 28-10-1998 ruling on the Assenov v. Bulgaria case, no. 90/1997/874/1086, 94.
74. 6-7-2005 ruling on the Nachova & Others v. BULGARIA case, no. 43577/98 and 43579/98, § 113.
75. See 28-4-2018 ruling on the Milić & Nikezi v. Montenegro case, § 99-100.
76. 22-11-2018 ruling on the Konstantinopoulos & Others v. Greece case, no. 29543/15 and 30984/15, § 93-94.

in certain cases in 2019, the National Mechanism had the opportunity to submit general remarks on the conduct of such investigations, beyond the 5 cases in which, according to the Mechanism, the investigations needed supplementation. More specifically:

- Legislation on firearms' use by police officers (Law 3169/2003) constitutes a detailed framework of legal guarantees against the abuse of force, with clear requirements and stages of weapon use escalation, in accordance with the principle of proportionality[77].
- Standard ECtHR case law, in a Greek case, the Makaratzis case, with regard to the requirements of an effective administrative inquiry, notes that *"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"*[78].
- By finding that the investigation of repeated shootings against a perpetrator of robbery in Attica did not include, among others, the inspection report, an expert's opinion or simple photographs of the car spots that were shot or the spot where the injured perpetrator was found, but also a

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77. See par. 2 of Article 3 of Law 3169/2003 on the use of firearms by police officers, which states: *"2. Police officers are permitted to use firearms, provided that it is required in order to perform their duties and the following conditions are met:*

a. *All means that are moderate by comparison to shooting have been used, unless they are not available or suitable for the specific situation. Moderate means mean pleas, requests, use of barriers, physical violence, police batons, authorized chemical substances or other special means, warning of firearm use and firearm use threat.*
b. *The police officers have revealed their status and have issued a clear and comprehensible warning on the imminent use of firearms, providing sufficient time for response, unless that is futile under the specific circumstances or enhances the risk of death or injury.*
c. *The use of a firearm does not constitute an excessive measure with regard to the imminent harm or the danger of the threat".*

78. Makaratzis v. Greece (20.12.2004 ruling, which found a violation of Article 2 of the ECHR (protection of life) in a shooting barrage against the car of the complainant. *"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. 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"* (para. 74).

specific reasoning showing that the police officers made unsuccessful use of all moderate means before shooting, as defined by law, so as to avoid it entirely, but nonetheless, the use of firearms was inevitable, the Ombudsman referred the investigation back for completion. His general remark, as to the investigation's integrity, was that the risk of shooting should not be assessed based on the result, namely the infliction (or lack thereof) of a specific harm provided by law, but on the risk of causing harm by using firearms under the relevant circumstances **(F. 254783)**.

- In a robbery suspect's arrest in Athens, the National Mechanism pointed out that the assessment of the danger posed by a person whose arrest is being attempted, justifies the use of firearms, should all other requirements provided by Article 3 of Law 3169/2003 are met, but only in specific cases and after a personalized assessment of certain clues and not, in any way, as a general rule[79]. Besides, according to the ECtHR case law on Article 2 par. 2 subpar. b. of the ECHR, the purpose of legal arrest or prevention of escape may justify the endangerment of human life, but only under conditions of absolute necessity. There are no such conditions when it is known that the person attempting to escape does not pose a life-threatening risk or when there is no suspicion – evidence that it has committed a violent crime, even if non-use of lethal force may result in failure of arrest. Finally, during the investigation of such incidents, the interpretation of Law 3169/2003[80] must be made with regard to the way of shooting **(F. 238510)**.

A report concerning the case of a pursuit in the region of Epirus was found justified as to the necessity and proportionality of the use of firearms by the police officers involved on the basis of the dangerous behavior of the perpetrator who, following straight shots against specific individuals, continued shooting in a public area while being chased. There was a verbal warning, the police officers were injured and the investigation was complete as to the identification of the incident's circumstances, having examined all the police officers involved, the perpetrator and, also, eyewitnesses to the incident. It successfully identified the police officers who shot (one of them took warning shots and the others aimed to immobilize the perpetrator) and included the labeling findings on the weaponry that was used and the gun shells that were found in the area of the incident **(F. 242624)**.

79. 10-5-2012 ruling on the PUTINSTEVA v. Russia case, no. 33498/04, § 44.
80. following the assessment of compliance with the principles of par. 2 of Article 3 of Law 3169/2003, in the corresponding paragraph of Article 3 of Law 3169/2003, having examined the relevant provision so as to justify the application.

The fact that the administrative inquiry insists on the exhaustive use of moderate means (such as flash grenades) and the proper warning of firearm use, even in cases of Molotov cocktail attacks against police departments, is considered positive by the Mechanism **(F. 236640)**.

The National Mechanism observes that the requirements of legal defense are not ruled out in the event of an attack, where moderate means are unavailing[81], but only under the condition that *"due to the possibility of harm, the intensity and the risk of the threat, this attack justifies the use"* of firearms by police officers[82].

The same reasoning for the necessity of a warning shot and the possibility of harm against a police officer was found in a case where a police officer shot once in the sky for intimidation, in order to help a colleague of his, who had fallen to the ground, escape, but also to prevent further escalation of the conflict **(F. 273569)**. Similarly, in a case where a stolen car was moving against a police officer, the officer shot it in the tires in order to prevent the risk against his health and life **(F. 234951)**.

By referring a report back for completion, The National Mechanism noted that in order for the defense to be lawful, the attack has to fulfill the objective nature of a crime and it also has to be imminent, something that is not justified in a case of maneuvers by a pursued car which had stopped **(F. 247083)**.

In a case of intimidation shooting, the National Mechanism made the general remark that the direction of the shots has to be proven by the administrative inquiry and not just labeled as safe **(F. 250377)**. It referred a relevant report back for completion in a case where no explanation was given as to whether the intimidation shots had a straight direction or aimed higher or lower, nor as to whether the police officer had previously visually checked

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81. See Single-Member Athens Misdemeanor Court 1823/2008 ruling on an assault against a police officer, which accepted that *"means moderate by comparison to shooting (pleas, requests, use of barriers, physical violence, police batons, authorized chemical substances or other special means, warning of firearm use and firearm use threat) were not suitable for this case and some of them were not even available at the moment"*.

82. See Athens Misdemeanor Council 1847/2009. In order to assess whether the defense is legal, the judgment on the compliance with the appropriate measure (Article 22 par. 3 of the Penal Code) is objective and must take into account the level of risk, the type of the possible harm, the manner and intensity of the attack, as well as all other circumstances and whether the defendant had other effective means or alternatives when attacked (F. 291394).

the surroundings, if possible, in order to make sure that no other people were present before shooting. **(F. 247083)**.

An omission to investigate whether the legal requirements for using a firearm had been met was found only in one case where it was reported that *the police officers (...) aimed their firearms as provided by the above Regulatory Decree*, without further reasoning or judgment with regard to the specific circumstances[83] and the necessity of the measure **(F. 244537)**.

In another case in 2019, the National Mechanism referred the EDE, because it did not find the conviction of a police officer for disciplinary offense justified, as the investigation did not specify how was he negligent with regard to the appropriate safety check of a firearm which misfired in a special canister **(F. 242958)**.

3.6. Racist motive or discrimination

The cases of behaviors with underlying racist motives or constituting discrimination[84], recorded an increase in 2019, both in percentage and in absolute numbers, as mentioned in the statistical assessment of the year, a fact indicative not of the amplification of racist phenomena but of the tendency to record and investigate those.

The ECtHR firm position, when proof of derogatory insults or behaviors by police officers comes to the light, points out that *"all the facts must be thoroughly investigated in order to assess whether there are possible underlying racist motives".*[85] The Court considers that the duty of the authorities to investigate the existence of a connection between racist beliefs and violent acts is part of the procedural obligations provided by this Article. The duty to ensure the fundamental values provided by Article 3, without discrimination[86], is also among the responsibilities of the authorities, according to

83. Par. 1 and 2 of Article 3 of Law 3169/2003.

84. The relevant list of arbitrary incidents that constitute discrimination under Article 56 of Law 4443/2016 was contradicting the definition of discrimination provided by the first chapter of the same law on equal treatment. The alignment with the complete definition of discrimination was achieved by Law 4662/20, Article 188, see the legislative development section below.

85. Mpekos & Koutropoulos v. Greece, 13.12.2005.

86. (see § 45, 70 and 73, 13-12-2005, ECtHR, L.M. & E.K. v. Greece, no. F. 15250/02, which condemns our country for the violation of Article 3 and Article 14 of the ECHR)

Article 14 of the ECHR. By adopting this view, the Hellenic Police issued the no. 7100/4/3/24.05.2006 Circular – Decree, which notes that police officers, in the context of disciplinary investigations that concern unethical police behavior against individuals who belong to vulnerable national, religious or social groups or who are foreigners, have to take every reasonable measure in order to assess and uncover the existence of racist motives, either as the sole motive in a case or in cases with multiple motives.

In the relevant cases that the Ombudsman reviewed in 2019, there is, however, difficulty regarding the investigation and justification of the Hellenic Police administrative inquiries.

The Ombudsman noted that the unjustified rejection of a complainant's allegations about a police officer's derogatory conduct, related to gender, in a train station in Attica, in conjunction with certain judgments made by the PDE on the officer's ethics, character and other characteristics, without referencing any relevant sources (service files, evaluations etc.) are elements that negatively impact the investigation's credibility. The Ombudsman had the opportunity to reiterate that the assignment of the PDE to a police officer of the same service (same police department as well) weakens the investigator's impartiality credentials **(F. 259951)**.

An omission to investigate racist motives is noted in administrative inquiries about improper conduct. In spite of the relevant reference in the order to carry out a PDE[87], the PDE report mentions nothing about racist motives (F. 260526) and investigates the issue insufficiently. The lack of racist motives is justified by a PDE report in a case of an inspection and alleged mistreatment of an alien musician in a central square in Attica **(F. 234634)** mainly by the fact that the police officers intervened in an incident between persons with the same racial characteristics, while the complainant's allegations *"cannot be verified and are not confirmed by the witnesses' testimonies"*, who, however, were only police officers. The Ombudsman noted that, according to the relevant ECtHR case law[88], there is insufficient investigation of racist motives during the disciplinary procedure (a breach of Article 14 of the ECHR on discrimination), unless a full investigation about similar incidents and the existence of relevant allegations (in the investigated persons' service files etc.) is conducted.

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87. *"In any case, the* PDE *report has to include fully justified estimations and conclusions on the existence, or absence thereof, of racist motives in the police officers' conduct, findings that must derive from the interrogation material"*.

88. Mpekos & Koutropoulos v. Greece, 13.12.2005, par. 74.

The Ombudsman observes that the timely search for alien eyewitnesses de facto ensures the effective investigation of relevant allegations. The failure, for example, to locate three underage aliens in the context of a PDE, more than 3 years after the incident, comes as no surprise **(F. 260526)**. Especially, when it comes to alien detainees, the National Mechanism, in its initial document addressing the Hellenic Police on the review of the administrative inquiry, points out that, besides their timely testimony, their transfer to another police department ensures their impartial treatment and, thus, the efficiency of the investigation **(F. 264452)**.

The alien detainees cannot, of course, be transferred inside the baggage compartment of the car, without having their dignity offended. In a case of a transfer of an alien from a region of Central Macedonia to Thessaloniki, he was placed in the baggage compartment of the police car, a place not destined for transporting people, while he was visible by the passengers of passing vehicles in a road of increased traffic. The disciplinary liability of the persons involved in the PDE was found upon the fact that the transfer was carried out "in a way that entails dangers*, without placing a safety belt on him, while simultaneously insulting his personality in this way"*. The investigated persons argued that their choice to place the detainee at the back area of the vehicle was based on the directions of the dermatologist with regard to taking protection measures and that there was no intention of offending the detainee's dignity, while, on the other hand, the detainee reported that: *"during the transfer, the police officers placed me in the baggage area of the police car, behind the passengers' seats, where I remained sitting with my hands handcuffed behind my back"*. Answering more questions, he stated that he remained in the same place until they reached Thessaloniki and that, as far as he remembered, there was no other detainee who was sick. The Ombudsman highlighted the relevant ECtHR case law, which notes that a treatment can be considered "humiliating", according to Article 3 of the ECHR, when its purpose is to humiliate and undermine the victim and if (with regard to the consequences) it has affected its personality in a way that is incompatible with Article 3. In this context, it has been deemed that the public nature of a punishment or treatment can be an important factor. Even if there is no publicity, such a behavior can still be included in this category, since it is enough to undermine the victim even in the absence of a third person[89]. The Ombudsman requested the complementation of the inquiry,

89. With regard to public handcuffing, the Court accepts that when it is done within the context of a legal arrest and the violence used is not unreasonably excessive, given the

so as to include, among other things, video material and the testimony of the doctor mentioned in the PDE (why was she called, whom did she examine, which measures did she suggest etc.). Furthermore, the Ombudsman considered the PDE proposed disciplinary sanction, a fine of 30 euros, disproportionately minor with regard to the violation of the person's dignity **(F. 258547)**.

The investigation of racist behavior/hate speech was also found insufficient, with regard to social media posting. In a case where a profile with racist material was taken down by the social network itself, while its creation and use was attributed to a closed group of police officers by the Media, the conduct of an EDE was ordered in 2018 with the directive *"In any case, the* PDE *report has to include fully justified estimations and conclusions on the existence, or absence thereof, of racist motives in the police officers' conduct, findings that must derive from the interrogation material"*. However, the Ombudsman found an omission to compare the investigation material to the completed preliminary interrogation material of the competent Department for Combating Racist Violence, omission which made the evidence gathered by the initial and completed EDE insufficient. In that way, a number of clues remained unused and were not further investigated, clues that result from the police officers' testimonies that were taken during the preliminary interrogation (for example, certain posts were published from time to time by a webpage for exchanging information of police interest, containing derogatory references to "colleagues" etc.). Not searching for more evidence and not comparing evidence to an expert's report creates lapses in logic, especially when both reports mentioned the inefficiency of the gathered evidence to lead to a safe conclusion as to the disciplinary liability of the investigated police officer regarding the participation of a group of police officers and the racist content of the specific profile. The investigator of the PDE proceeded to mistakenly distinguish the disciplinary liability of the investigated police officer, between his alleged role as a full or partial administrator of the disputed profile and the content of the profile itself, which she

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circumstances, there is no issue under Article 3 of the ECHR, however, resorting to such methods must be justified as to whether the individual may resist arrest or inflict harm or injuries or make it impossible to gather evidence. In a case where the Court found no violation of Article 3 of the ECHR, it, however, took the following into consideration in order to decide whether the treatment was humiliating or not: whether handcuffing was justified, whether the handcuffed person was visible to a small number of third persons for a short time and, also, the fact that he claimed that he felt humiliated (see 16-12-1997, Raninen v. Finland, no. 152/1996/771/1972, § 55-59).

considers as *"requiring special analysis, as the posts may be subject to the provisions of the relevant law [Law 4285/2014], but only justifiably, since part of their content may be considered satirical, and only the criminal court may issue a complete judgment on the matter."*

However, the logic of such an argument ends up depriving the conducted PDE of its very content, since the police officer is investigated disciplinarily because of the racist (or non-racist) content of the posts included in that specific profile, of which he is allegedly the administrator or one of the administrators, and for that reason he was called to apologize and he was also criminally prosecuted, as the content was not considered satirical and the webpage was taken down by the social network. It should be noted that the ECtHR case law has unequivocally concluded that *"any comment directed against the values governing the Convention shall be excluded pursuant to Article 17 [Prohibition of abuse of rights] by the protection of Article 10 [Freedom of expression]"*[90]. In this case, beyond the unjustified suspension of the disciplinary procedure, in violation of the principle of its independence *(for the ordinary procedural issues, see below),* there seems to be an underlying effort to postpone the disciplinary procedure and, much more, the passing of judgment on the disciplinary offenses, depending on the outcome of the criminal procedure, which raises questions regarding the substantial response of the police to cases of misconduct by police officers with underlying racist motives (F. 230990).

90. See Seurot v. France, 18th May 2004, ECtHR.

4

Commonly identified shortcomings of administrative investigation procedures

4. Commonly identified shortcomings of administrative investigation procedures

In 2019, in the context of Article 56 of Law 4443/2016, the Ombudsman made remarks on reports of administrative inquiries, either in the form of an Administrative Inquiry Under Oath (EDE) or a Preliminary Administrative Inquiry (PDE), which were notified to it by the competent Police Personnel Directorate of the Hellenic Police, in the context of the cooperation of the National Mechanism for the Investigation of Arbitrary Incidents with the relevant Services that fall within its jurisdiction, that commenced after its letter dated 08.06.2017[91]. Through its remarks on the findings reports it either referred those back for complementation with regard to specific issues or expressed general observations for future application or on general issues concerning administrative inquiries. This section shall present the conclusions - findings of the Mechanism on the reports of administrative inquiries, regarding the internal investigation procedure and classified in the following three categories:

I. Form and type of the administrative inquiry per subject,

II. Administrative inquiry procedure

III. Independence of the disciplinary procedure. Each one of the preceding categories includes the conclusions per subject. To the extent that the administrative inquiries mostly concern Police officers, they are governed by Police disciplinary law and references will be made to the provisions of Presidential Decree 120/2008. In the future, the Mechanism hopes for closer and wider cooperation with the other competent Personnel Directorates of the Administration under its jurisdiction.

91. For this collaboration, see Chapter 1 thereof and the 2017-2018 EMIDIPA Report, p.17-18, https://www.synigoros.gr/resources/docs/emhdipa_2017_2018_gr.pdf

4.1. Form and type of the administrative inquiry

In two cases, the Mechanism observed that the competent authorities did not order the conduct of one of the administrative inquiries provided by Presidential Decree 120/2008, but an **informal investigation.** In one of them, an individual's allegation was addressed to the Hellenic Police Internal Affairs Service about getting assaulted by police officers, namely a police car crew, in September 2018, during his transfer to a Police Department in Athens **(F. 260305)**, but also during his detention. The Mechanism noted that it was remarkable that the Police chose not to proceed to an administrative inquiry procedure, such as a PDE or an EDE, although the allegations alluded to committing a disciplinary offense**.** Moreover, after pointing out the provisions of Articles 23 (complaints against police officers), 24 par. 1 subpar. α'[92], and 21 par. 1 of Presidential Decree 120/2008[93], the Mechanism stressed that the institutionalized procedure of the preliminary administrative inquiry should be followed and, in particular, the provisions of Article 24 par. 2-5 of Presidential Decree 120/2008, since, on the one hand, the requirements provided by law for its conduct and purpose are met, in accordance with Article 24 par. 1 of Presidential Decree 120/2008, and, on the other hand, there is no apparent legal basis for dismissing a citizen's complaint concerning a disciplinary offense committed by police officers, regardless of its validity, following an informal investigation.

In the other case that concerned an incident of arrest of aliens by Police personnel in Epirus, following an inspection of an intercity travel bus **(F. 241075)**, and placing them in the baggage compartment of the police car, the Mechanism requested specific information. For this case, no administrative inquiry was ordered in accordance with the provisions of Presidential Decree 120/2008, but an investigation was carried out by the Deputy Chief of the Police Directorate, which, along with the relevant correspondence, led to the finding that the arrest took place in order to inspect the authenticity of the legal documents permitting their stay in our country and they were released after the relevant verification.

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92. A preliminary administrative inquiry is carried out, among other circumstances, in the case where a disciplinary offense is considered to have possibly occurred but there is no clear evidence of its existence, with the purpose of finding out whether it occurred or not.
93. The prosecution of disciplinary offenses is the duty of the competent disciplinary bodies and it is carried out on their initiative, based on the information that comes to them in any legal way.

The Mechanism also requested information about the vehicle of the arrest and found, after reviewing the photographs and the vehicle booklet, that it was a passenger vehicle. The sent documents revealed the type of the car, the part where the arrested was put and the fact that it had windows, seats and safety belts. Given the lack of another relevant reference or testimony, there was no evidence of use of violence or other maltreatment by the police officers involved and, therefore, the Mechanism's report expressed its views on the practice of restraining individuals in order to verify the authenticity of their residence permit documents under the provisions of Article 74 par. 15 subpar. θ' of Presidential Decree 141/1991 and its interpretation.

4.2. Administrative inquiry procedure

Subject of administrative inquiry investigation

In order to uncover the circumstances under which the injury of police officers of Police Departments of different Police Directorates within the Region of Central Greece, the conduct of a PDE was assigned to an officer of the Police Department, along with the investigation of the cause of the harm and the relation of the injury to the service, as well as the accountability for any disciplinary misconduct by them or any other police officer involved and the future impact of the injury to their general service status **(F. 261394)**. The police officers were accused of physical harm, damage to foreign property, defamation and false denunciation by an individual, for the same incident in which the police officers were injured.

The Mechanism referred the PDE report back for completion, as the conducted PDE **did not have the allegations made by the complainants against the police officers as its subject.** Therefore, those were not investigated during the PDE nor is it confirmed that the allegations in the lawsuit against the police officers are an integral part of the existing parallel conviction of the complainants, as the claims in the lawsuit were not investigated in the criminal proceedings against the claimants before the Three-Member Misdemeanor Court either, since this court hearing preceded the lawsuit. Moreover, the Mechanism requested to examine whether the police officers involved in the incident acted in defense against the complainants and whether the necessary requirements for a plea of defense were met.

On the completed PDE, the Mechanism again concluded that no further evidence is shown as to whether they acted in their defense, and the witnesses

that were summoned were neither found to have been asked on the matter, in order to investigate and verify the lawsuit allegations, nor about the findings of the hospital certificates. They were not asked whether the police officers used force and of what sort, in the context of defense on their part, as well as whether the legal standards for defense were followed. Therefore, the investigation of the complainants' allegation was not sufficient and the findings on the use of violence by the police officers, even as a response to the complainants' attack, were not supported by the evidence of the case file. For those reasons, the PDE was yet again referred back for completion, as it was not deemed thorough and justified with regard to the allegations against the police officers.

In another case **(F. 247702)**, when two police officers of a Police Department in Western Attica visited a house in order to deliver a traffic violation notice, the housewife argued with one of the police officers, resulting in a light injury on her left shoulder, and ended up in the Police Department with her husband in order to file a complaint against the police officer - driver of the police car, but was instead arrested and detained due to a lawsuit filed against her by the officer she complained against. The two PDE reports that were sent to the Mechanism (the initial proposing dismissal of the disciplinary case and the second one proposing suspension until the court's judgment on the criminal case) **remained silent about the complainant's injury**, despite the fact that the findings of the file included a relevant medical opinion and two eyewitnesses' testimonies. For that reason, by invoking the ECtHR case law on providing convincing justification for injuries of detained persons[94], the PDE reports were referred back for complementation due to the insufficient reasoning of their judgment.

In a case regarding the use of firearms by police officers during an operation in Athens, with the purpose of arresting a robbery suspect **(F. 238510)**, the Mechanism referred the disciplinary case for complementation, noting that the EDE investigator omitted to assess and evaluate the expert's report regarding the pursued citizen's car and the photographs of the vehicle which depict the spots that were hit by police gunfire.

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94. *"If a person who is in good health is detained or put under control by the police and is then found to have sustained physical harm, the state is obliged to provide reasonable explanation for the causes of the injury, whereas failing to do so raises issues under Article 3 of the* ECHR*"* ECtHR, 18th December 1996, Aksoy v. Turkey, 2. ECtHR, 13th December 2005 L.M. v. Greece, 3. ECtHR, 24th May 2007, D.Z. v. Greece.

Following the supplementary EDE, the Mechanism completed the examination of the case, having found that its observations were taken into consideration and that the findings report has proceeded to take certain actions in order to investigate following its remarks, as the head of the police squad that attempted the arrest operation and the rest of the police officers involved were additionally examined on specific matters. The evaluation of those examinations and the expert's report concluded that the provisions of Article 3 par. 4 subpar. β' and par. 5 subpar. β' of Law 3169/2003 were respected, since the police officers performed their duty and the use of firearms abided by the principle of proportionality with regard to the possible harm.

However, in the supplementary EDE, the Mechanism found new evidence on the facts of the case, concerning the operational practices that were followed in order to achieve the arrest of the person, clues that were not included in the initial EDE report. For that reason[95], it expressed a general remark for future cases, that the EDE investigator should investigate the facts in order to fulfill his inquiry duties within the context of the disciplinary procedure, which resembles the criminal trial with regard to the proof stage, but has a wider scope that relates to the civil servant's functional mission[96]. In this context, the operational practice followed does not fall outside the investigational duty of the officer. Specifically, when this involves the use of firearms, where the use of moderate means is required by Law 3169/2003, anything that facilitates the judgment on the compliance with the principles of Article 3 of Law 3169/2009 must be investigated.

An important element of the investigation during the administrative inquiry is to **identify the individuals who committed acts or omissions during the incident under investigation,** which is, after all, explicitly stated in Article 26 par. 1 of Presidential Decree 120/2008 and the terms of Article 24 par. 1 of Presidential Decree 120/2008. In some of the cases that the Mechanism reviewed, it pointed out that, even though the identification of the police officers involved was a necessary element of the investigation, those

95. provided that under Article 26 par. 1 of Presidential Decree 120/2008, the purpose of the EDE is to determine whether a disciplinary offense has been committed or not, as well as to determine the conditions for its perpetration and the perpetrator's identity, while the provisions of Articles 8 and 33 of the same Presidential Decree show that the rules of Criminal Procedure and Criminal Law apply to Disciplinary Law and its procedures.

96. A. Papadamakis, the relation of disciplinary procedure and criminal trial, honorary volume for Professor N. Kourakis, Crime and Crime Suppression in a time of crisis, p. 530.

were not found in the original report. In one case, where it was reported that a business owner was assaulted by officers of a Police Department in the Region of Western Macedonia during her apprehension, transfer and arrest **(F. 249150)**, the operational behavior of the police officers in this case should be identified and evaluated as to its compliance with the provisions of the applicable legislation and the Police Regulations. More specifically, the investigation has to provide answers on which of the police officers who were present dealt with the incident and which moderate means were used to immobilize the complainant, whether violence was used for the person's immobilization and how did the transfer to the Police Department take place.

In a case of a protester's injury in 2017, in Thessaloniki, **(F. 235596)** the Mechanism considered the complementation of the administrative inquiry necessary, with regard to, among other things, the reasoning of the report on the cause of the protester's injury, so as to identify the police officers responsible. This is because, despite the identification of a police officer as the perpetrator of the injury by 4 civilian witnesses, who was photographed wearing a helmet and lifting the police baton in front of the banner held by the complainant, the report challenged the credibility of the witnesses proposed by the complainant but not the credibility of the police officers who testified, whose claims, that no police officer recognized the police officer in the photograph, it accepted.

Additionally, in a case of arrest of three citizens as suspects of committing a crime, and transfer to a Police Department in the Region of Thessaly, in the context of a case investigation following an anonymous phone complaint **(F. 250692)**, where the detainees reported infringements of their personal freedom, the Mechanism found that the report of the administrative inquiry did not clarify the place where each arrested citizen was detained, which police officers were tasked to guard each one of them, whether they were in handcuffs and whether the citizens in the Police Department and the police officers on duty had visual contact with the arrested citizens.

Independence requirement for the investigator

A firm position of the Ombudsman[97] on the disciplinary - administrative inquiries, even before assuming the special mandate of the EMIDIPA, is that the way of conducting a disciplinary inquiry should be vested with safeguards of objectivity and impartiality, pertaining also to the person appointed for the investigation and the content of the disciplinary judgment. In fact, the basic aim of disciplinary law in appointing the investigating officer is to ensure the objectivity of the procedure and that is achieved by *increasing the hierarchical distance and, thus, the impartiality* of investigators vis-à-vis the police officers under investigation.

An obligation arising from Article 3 of the ECHR, in accordance with the ECtHR case law[98], in conjunction with Article 1 of the Convention, is the conduct of an independent and effective investigation into allegations of mistreatment by police or other state authorities, in violation of Article 3 of the Convention, which may lead to the identification of perpetrators and accountability. In the Court's view, another element that the investigation must possess in order to be effective, is **the independence of the investigator in relation to the investigated persons. This means that there should be no operational or hierarchical connection between them, and that they should practically be independent from each other.**

Based on the above principle, the Mechanism made relevant remarks on the reports of the findings of the administrative inquiries which it reviewed in 2019. Also in its previous report[99], the Mechanism identified the problem that Article 26 par. 4 of Presidential Decree 120/2008 specified only in the EDE and not the PDE procedure the formal impartiality in the status of the investigator in relation to the investigated. In 2019, in many cases regarding administrative inquiries, the Mechanism reiterated its recommendation on the subject, pointing out the need to ensure specific requirements in the person of the investigator to ensure the independence and impartiality of the inquiry itself.

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97. See the 2004 Special Report of the Greek Ombudsman on: "Disciplinary - Administrative Investigation of Complaints Against Police Officers", https://www.synigoros.gr/resources/docs/astinomikoi.pdf

98. 6-7-2005 ruling on the Nachova & Others v. BULGARIA case, no. F. 43577/98 and 43579/98, § 110 and 28-10-1998 ruling on the Assenov v. Bulgaria case, no. F. 90/1997/874/1086, 320.

99. https://www.synigoros.gr/resources/docs/emhdipa_2017_2018_gr.pdf, p. 63 et seq.

In a case-file report concerning PDE findings, the Mechanism expressed its view on the need for a future provision for the **assignment of the investigation to an officer of another department, different from the one of the police officers involved, for all internal investigations** (even in the form of PDE) concerning incidents of alleged offenses related to abuse, and offenses provided by Articles 10 par. 1 and 11 par. 1, especially when those are also investigated for underlying racist motives. The Mechanism referred the PDE findings report back for other reasons. However, it found, by reviewing the order for conducting the PDE and the findings report, that the PDE investigator was the Head of the Police Directorate that the Department of the investigated officers belonged to **(F. 258547)**. The competent disciplinary authority that ordered the conduct of the PDE was the General Regional Police Chief of Central Macedonia, who is responsible for more than one Police Directorates. The assignment to the Head of the Police Directorate undoubtedly ensured some independence safeguards due to increased hierarchical distance and at the time it was in accordance with the provisions of Presidential Decree 120/2008, as in force then, because of the type of the investigation which was a PDE.

Also, in another case of investigation of an incident which involved police officers from the Immediate Action Department and the Security Sub-Directorate of a Police Directorate in the Region of Western Greece, the PDE investigation was assigned to the Deputy Chief of the Police Directorate **(F. 244537)**. The Mechanism, in its relevant report, found that the PDE was assigned to an officer from the same Directorate where all officers involved in the investigated incident belong. For that reason, it pointed out that not ensuring sufficient formal distance between the investigator and the investigated officers infringes the presumption of impartiality of the investigator if the latter cannot invoke his official status as providing guarantees of impartial judgment during the performance of the duties assigned to him. Therefore, due to other findings as well, the Mechanism proposed to the Police to order a new Preliminary Administrative Inquiry to investigate the incident, which should take the aforementioned remarks into account.

In another case **(F. 259551)** concerning the investigation of the circumstances of a confrontation between a police officer and a citizen in a Subway station, the Mechanism, through its report, referred back the relevant PDE for various investigation issues and at the same time expressed its reasonable question, as to the objectivity and unbiased use of the evidence, the judgment and the impartial conduct of the investigation, as it found that the PDE conduct was assigned to a colleague of the defendant, who serves in the

same Police Department of Athens. The Mechanism reiterated its position that the guarantees of the credible and impartial conduct of the internal disciplinary investigations should be strictly upheld by the Police.

In a case of investigation of a citizen's complaint for physical injuries (following a lawsuit), against 4 police officers, after his arrest for violating a stop signal **(F. 250693)**, which he disputed, one of the Mechanism's observations as a general problem of the PDE regarded the hierarchy relationship between the preliminary inquiry investigator and the police officers involved in the investigated incidents, as 3 of the 4 police officers involved in this investigation allegedly served in the Security Service of the Police Directorate of the Eastern Macedonia and Thrace Region and the PDE was assigned to the Deputy Chief of that Service.

The Mechanism's report that referred the PDE reiterates its general remark that the necessary formal **distance in the service status of the investigator** of the internal investigation must be ensured in cases of allegations of abuse of detainees, by assigning the conduct of the investigation to a police officer outside the Directorate where the officers involved in the investigated incident serve. This constitutes a **basic guarantee of formal impartiality** of the internal investigation, against any external factor, bona fide or not. The relevant case law of the European Court of Human Rights[100] was reiterated.

The same remarks were made by the Mechanism in another case for the identification of circumstances under which an alien unaccompanied minor escaped from a Reception and Identification Center (RIC) in 2018 and was mistreated in the Region of Eastern Macedonia and Thrace **(F. 252323)**. As for the PDE conduct institution, the Mechanism reiterated its firm position on the need for formal distance in the service status of the investigator of a PDE regarding the mistreatment of detainees, as it found that the initial PDE was carried out by a police officer serving in a Pre-removal Detention Center for Aliens (PROKEKA) of the same Police Directorate. However, the supplemented PDE was conducted by a police officer from the Security Sub-Directorate, following a new order from the Police Directorate.

It is noteworthy that in two cases, the PDE procedure was changed and as-

100. *"…the Court notes that there is evidence capable of raising doubts as to the independent and thorough nature of the investigations. First of all, it points out that the persons to whom the administrative inquiry was assigned were colleagues of the police officers for whom there were suspicions of involvement…"* (ECtHR 26.4.2018 Andersen v. Greece, par.61).

signed to another person after an initial document by the Mechanism that it will monitor the internal investigation and a relevant remark to ensure the distance between the investigator and the investigated. The first case **(F. 259979)** concerned complaints of detainees of a Police Department of Thessaloniki to a CPT delegation during its visit.

The second case **(F. 260309)** regarded an incident in Athens in 2019, where, during several incidents that took place in the context of a demonstration, an individual reported (and filed a complaint against police officers for unprovoked physical harm) verbal abuse by police officers against his wife, violence against him and head and left shoulder injuries when he attempted to address them. The initial investigator, according to the relevant PDE conduct order, came from another Sub-Directorate of the same Directorate. In its initial document, the Mechanism pointed out that the assignment of the PDE to an officer that is hierarchically superior to the investigated officers, but serves in the same Directorate, seems to ensure undisputed guarantees of independence due to the increased hierarchical distance and, as it concerns a PDE, is in accordance with the provisions of Presidential Decree 120/2008 (as in force at the time). However, the Mechanism's proposal is the assignment of the investigation to an officer of another directorate for all internal inquiries (even in the form of PDE) that concern the investigation of incidents that include mistreatment and could fall under the provisions of Article 10 par. 1 and Article 11 par. 1 of Presidential Decree 120/2008. The police regional headquarters in GADA reached the same conclusion and a new order from its Chief assigned the investigation to another Directorate-level Service.

However, the Mechanism, in another case, **(F. 251366)** found that the objectivity and impartiality requirements were initially ensured through increased hierarchical distance, but observed that changes in the person of the investigator should be made at a time that ensures the smooth completion and not to hinder the relevant procedures due to changes in the service status of the officers, especially in cases where the Service itself considers the investigated case as extremely serious and special.

The initially ordered Preliminary Administrative Inquiry (PDE), following a relevant order from the Hellenic Police Headquarters, was assigned to the competent GADA Sub-Directorate. In less than one month, due to the severity and uniqueness of the investigated incident, a newer order requested the continuation and completion of the PDE by another high-ranking officer and then Head of a Directorate, by including the evaluation and incorporation of the evidence from the criminal case file. Less than a month later, through a

relevant Presidential Decree, the PDE investigator was promoted due to ex officio retirement and a newer order assigned the continuation and completion of the PDE to a high-ranking officer of the same rank – Deputy Chief of a Directorate. Within a week, the new investigator was informed and the PDE file was sent to him.

Therefore, so as not to obstruct judgment on high-ranking officers' promotions due to assigned administrative inquiry duties, the Mechanism noted that this should be taken into account when choosing an investigator for cases of exceptional severity or that a timeline is at least set for the completion of investigations before the time of regular promotions, if permitted by the applicable provisions of disciplinary law. Also, the most important thing is to encourage the local police authorities to order investigations of similar incidents (especially since they have a relevant authority) and not to expect the Headquarters to issue a relevant order, but instead to provide information on their own actions.

Furthermore, in another case **(F. 249152)** of a PDE in the Region of Crete, it was found that both the initial investigator and the following one were assistants of the competent official that decided the conduct of the PDE. In the context of Article 24 par. 2 of Presidential Decree 120/2008, that choice ensured the provision requirements that the inquiry investigator should be at an increased hierarchical distance from the investigated persons. However, the Department that acted in the incident under investigation is, according to Presidential Decree 7/2017 (A' 14), administratively subordinated to the same Service of the Region of Crete where the PDE investigator also serves.

Therefore, in the context of future amendments of Presidential Decree 120/2008 and the statutory provisions of the Hellenic Police, the Mechanism proposed to examine the compatibility with the applicable disciplinary law and the possibility of adding a special provision for assigning the conduct of administrative inquiries for personnel of special services of the Regional Departments of the Greek Police to the level of General Regional Police Directorates and the competent Chiefs and, especially for offences where the reported incident is related to mistreatment, to a Special Service with jurisdiction over the whole country or for the purpose of conducting administrative inquiries.

In one of the cases, described in the section of the present Report on torture and other violations of human dignity in the sense of Article 137A of the Criminal Code, concerning a detainee in a Detention Center **(F. 237463)** who, during his transfer and detention in a GADA Directorate, complained

that he had been subjected to torture, illegal and violent acts by police officers in order to obtain a DNA sample from him, the Mechanism, which referred the PDE back for completion through its report, asked to consider the possibility of upgrading the disciplinary investigation to an EDE, for reasons regarding the gravity of the allegations and the impartiality of the procedure, reiterating its relevant proposal[101], which is in fact quite difficult to ensure when the investigator serves in the same Directorate as the investigated police officers.

Furthermore, in another case[102], the Mechanism pointed out the initial difficulty and delay in the administrative inquiry, which was overcome via the assignment of a final PDE investigator and subsequently EDE investigator. Since then, the investigation seems to meet the required speed which the ECtHR considers necessary in such cases, despite the late submission of information to EMIDIPA. This remark is based on the late submission of information to the Mechanism, which was sent after a second request and almost two months after the original request and, subsequently, the findings of the EDE report were forwarded to the Mechanism.

Matters relating to witnesses' testimonies

Most cases in this section fall under this specific topic.

Search for witnesses

In cases reviewed by the Mechanism, it was found that **no witnesses other than police officers were summoned or testified.** In fact, in a case of investigation of an incident involving police officers from the Department and Security Service of the Western Greece Police Directorate **(F. 244537)**, where the report found that no allegations of degrading treatment were investigated. On the contrary, the report relied solely on the fact that both the defend-

101. Special Report of the Greek Ombudsman, 2017 - 2018, National Mechanism for the Investigation of Arbitrary Incidents, p. 32 - 33, 63 - 64 https://www.synigoros.gr/resources/docs/emhdipa_2017_2018_gr.pdf, p. 63 et seq.

102. Described in the violations against life section o the present Report: In the center of Athens, following an order from the Command Center, police staff intervened in a reported attempt of jewelry store robbery and exercised physical violence in order to arrest and handcuff an injured person who was taken to the hospital, where he was pronounced dead **(F. 251366)**.

ants and the other citizens involved in the incident testified that the police officers did not insult them, while the citizens that were present during the incident were not examined, and the testimonies and written statements of the involved police officers were fully accepted, although they were identical and their content should therefore not be taken into account, given the apparent lack of any evidence value.

Moreover, even when a police officer is not involved in the incident (for example, **the officer on duty**, **F. 232460**, in a case where the object of the investigation were the physical injuries of detainees in GADA detention facilities), the Mechanism emphasizes the need to find third-party witnesses as a guarantee of impartiality and independence of the investigation, as required by the ECtHR case law, which will be analyzed below. Specifically, in a case of investigation of an allegation concerning violent acts against prisoners in a Correctional Facility **(F. 249152)** by a special police unit during a search for illegal objects following a prisoner's attempt to escape, the Mechanism found that none **of the detainees** were summoned to testify (nor did they testify) in the administrative inquiry, because their examination would not, supposedly, contribute to the investigation of the incident. Therefore, the Mechanism asked for that decision to be reconsidered and for testimonies from eyewitnesses - victims or non-police individuals, as well as the **medical and nursing staff of the Correctional Facility's Clinic** on whether detainees were examined or hospitalized, to be taken and included in the file and to be assessed.

In case of a detainee's complaint for torture and other violations of human dignity under Article 137A of the Penal Code in a GADA Service during DNA sampling **(F. 237463)**, the complainant himself was not called upon to testify (despite his claim that he could identify some of the police officers, due to their special characteristics), as well as the **detainee** eyewitnesses (in the same cell, neighboring cells or within the radius in proximity of the incident), the **defense counsel** of the complainant at the time (who on the same night found his client severely assaulted) and the **prison officials**. The whole disciplinary procedure relied exclusively on the written statements of the two investigated police officers, while the names and the number of the police officers of the delegation that was tasked to carry out the expertise was not found. As a result, the individuals responsible were not identiied.

In another case of allegation of an assault during transfer in a police car and following detention in the Police Department **(F. 260305)**, the complainant was summoned via e-mail to testify in the context of the administra-

tive inquiry, while **another person who was inside the police car with the complainant** was not found to have been searched in order to testify.

The need to examine a witness due to his special knowledge and instructions that he allegedly provided and which are cited by the investigated police officers as a justification for their behavior, was invoked by the Mechanism in one case. In this specific case, the administrative inquiry concerned the placement of an administrative detainee to the baggage area of the police vehicle during his transfer **(F. 258547)**. The Mechanism requested the examination of the only non-police witness who also had an active participation in the case due to her physician status, as a **private dermatologist who examined the detainees,** in order to ascertain the existence of preventive instructions and fear that prevailed due to a contagious disease case, so as to confirm the claims of the investigated officers, but mainly to ensure the requirements for the efficiency of the investigation and to comply with the obligations arising from Articles 3 and 14 of the ECHR.

According to the Mechanism, the definition of **third-party witness** includes **any person who was not legally or ex officio responsible for supervising other persons.** In a case of investigation of the conditions under which a foreign unaccompanied minor escaped from a RIC in 2018 and was subsequently mistreated **(F. 252323)**, the Mechanism, after pointing out that the examined police officers were the ones responsible for supervising the guards during the shift, but also that the other two witness testimonies came from other persons responsible for the minors (from the **head of the** RIC **and the temporary guardian of the minor**), requested that these witnesses should be referred by their official status in the report and that third persons with no supervision responsibilities should also be examined.

In cases of **protests - public gatherings**, where, in light of public order measures taken by the Hellenic Police, an administrative inquiry is conducted for allegations of violence and illegal violations, such as offenses against physical integrity or health, the Mechanism finds that **protester eyewitnesses** are not always summoned. Specifically, in a case of administrative inquiry of a protest march in Athens in 2019, where incidents between protesters and police forces broke out and a protester was injured **(F. 255601)**, the Mechanism found the lack of non-police third-party witnesses and the lack of recording material from cameras and pointed out that gathering evidence in the context of the EDE, especially when there is a massive gathering of people present, should include eyewitnesses on behalf of the protesters. The evaluation of often conflicting testimonies is a common burden in EDE

investigations and, if there are reasonable doubts about the existence of disciplinary liability, this should be reported and justified, as a guarantee of impartiality of the investigation.

In an ongoing PDE, the Mechanism requested that third-party witnesses that were present in the protests or the incident are sought, beyond those of police officers, possibly from the organizers, and that copies of the affidavits that were included in the criminal case file, in accordance with the Code of Criminal Procedure, are taken or that the witnesses are called upon to testify again (according to the investigator's judgment), in order to prove the referred in the report (and based on the police officers' testimonies) necessity of selecting moderate means, such as the defensive stance by the police unit and non-use of force, while wielding police batons. Such is a case of a public gathering – rally in 2018 outside an Embassy in Athens, when the injury of an individual was reported by police officers **(F. 247416)**.

As part of an administrative inquiry into allegations of physical violence by police officers in 2016 against a person accompanying alien minors **(F. 260526)**, the Mechanism found that **third-party eyewitnesses who testified before the criminal court were not called to testify**. On the other hand, two of the three police officers involved in the incident were verbally examined at the headquarters of another Department, although their court affidavits showed that they were not eyewitnesses at the time of the alleged incident of violence by the third police officer. In one case, however, the opposite occurred. The findings report indicates evidence in the witnesses' testimonies from the relevant affidavits, which recorded the timeline of the incident and was considered significant, but its content was not further investigated in the context of the criminal investigation **(F. 251366)**.

In cases of administrative inquiries with foreign victims and complainants, the Mechanism always examines their testimonies in the context of the administrative inquiry. Specifically, in a case, it noted that the victim's relocation to another country does not facilitate the effective search for the truth, however it does not weaken the need to pursue the proper conduct of the administrative inquiry, in accordance with the principles of legality and fair administration and the state's obligation to protect fundamental rights, especially when the complaint concerns such a serious offense as torture by security forces **(F. 233679)**.

In submitted reports of administrative inquiries with foreign victims and complainants, the investigators invoke not finding victims, albeit, in order to shed light on the circumstances under which a foreign unaccompanied

minor escaped from a RIC in 2018 and was subsequently mistreated **(F. 252323)**, it was noted that between the incident and a testimony in February 2019, not finding either the complainant or the eyewitnesses in the RIC was to expected, given that the maximum length of restriction period in the RIC is, in principle, determined as 25 days by Law 4375/2016. However, if the management of the RIC had informed the investigator which individuals had been placed at the time of the incident in the same place and in the specific container as the complainant, it would have been able to seek the other minors present.

The search for the victims long after the incident (3 years later) was highlighted in another administrative inquiry case involving foreign underage victims and it was noted that this was to the detriment of the effectiveness of the internal investigation, although testimonies from some minor complainants were found in affidavits before a public notary, which are said to have been submitted and should be taken into consideration **(F. 260526)**. However, in one case **(F. 246103)**, following a proposal by the Mechanism to justify a complaint, which was deemed vague by the administrative inquiry, due to originating from an existing person who did not press on with a newer e-mail, the investigator responded one month later with e-mails to the alleged complainant, seeking to receive more information in order to complement the administrative inquiry, but he did not receive a response.

The Mechanism[103], in a case of transfer of two citizens to a Police Department in the Region of Central Macedonia, following a fight with the police car crew, which resulted in light injuries in the left hand of one of them **(F. 253320)**, pointed out that the judgment on the allegations' validity cannot be based on the argument that although the complaint refers to the presence of eyewitnesses, the injured party did not, however, make any effort to find them, as this would be a transfer of the PDE investigator's duties, according to Article 24 par. 3 and Article 33 par. 1 of Presidential Decree 120/2008. Furthermore, in another case **(F. 242623)**, the Mechanism, after finding that the completion of the administrative inquiry was carried out according to its remarks, it noted that an effort should be made in order to seek information on evidence from witnesses, so that the investigator can find it, but he should not rely on them to submit evidence themselves, as the investigator has the power to collect it through his actions[104].

103. having in mind the above and the provisions of Presidential Decree 120/2008, as well as the purpose of the disciplinary procedure.

104. According to Article 24 par. 3 of Presidential Decree 120/2008, the PDE investiga-

Assessment of witness testimonies

The disciplinary law of the police personnel (Presidential Decree 120/2008) includes specific regulations for the means of proof, the examination of witnesses and the content of the administrative inquiry's report (Articles 8 par. 1, 24 par. 3, 29 par. 1 and 33 par. 1). One of the basic rules of criminal procedure is that of the specific and thorough reasoning of court decisions[105], which is provided by Article 139 of the Code of Criminal Procedure and which, according to the provision of Article 8 par. 2 of Presidential Decree 120/2008, also applies in administrative inquiries. Article 29 of Presidential Decree 120/2008 may not make special reference to the parts of the Report and the need to justify the PDE investigator's judgment, as did the previous Article 29 of Presidential Decree 22/19996, but the Ombudsman, in its reports, has consistently emphasized the need to uphold the principle of complete justification[106], according to which the reasoning may not be a mere formality, since the substantial correctness of the judicial judgment is the aim. The formal assessment of the available evidence (especially with full reference to the disciplinary judgment in the final part, without citing critical facts) and the selective use of evidence are types of misconduct that violate the above principle. The Mechanism points out that the findings of administrative inquiries need to comply with the principle of complete justification **(F. 249152, 254614)** and that the utilization of witness testimonies is part of a complete reasoning.

Moreover, as is well known, according to ECtHR case law[107], the assessment of all testimonies in an administrative inquiry (in the findings report) and not only of the testimonies from police officers, is required: "the administrative inquiry under oath used different *measures and standards when assessing witnesses' testimonies, since the testimonies of citizens participating in the incident were considered subjective, while those of police officers were not. However, the credibility of the latter should have also been disputed, since*

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tor *"examines witnesses, collects evidence in order to ascertain the perpetration of a disciplinary offense or not"* and, according to the provisions of Articles 8 par. 1 and 33 par. 1 of Presidential Decree 120/2008, has the power to gather evidence though his actions without the need for it to be provided by witnesses.

105. decrees, as well as orders (of interrogators or prosecutors).

106. Special Report of the Greek Ombudsman, 2004, "Disciplinary - Administrative Investigation of Allegations against police personnel", p. 60, https://www.synigoros.gr/resources/docs/astinomikoi.pdf

107. ECtHR rulings, § 60, 24-5-2007, D.Z. v. Greece, no. F. 17060/03 and § 47, 14-1-2010, P.G. v. Greece, no. F. 2945/07 and 26.4.2018, Andersen v. Greece, par. 61.

the purpose of the administrative inquiry under oath was to find out whether the police officers were disciplinarily liable" (§ 60, 24-5-2007, D.Z. v. Greece, no. **F. 17060/03** and § 47, 14-1-2010, P.G. v. Greece, no. **F. 2945/07**). Having this in mind, in the context of ensuring the impartiality of an administrative inquiry, the Mechanism examined the manner in which the administrative inquiries it reviewed assessed testimonies, specifically noting that according to the above ECtHR case law, equal distances must be maintained by the administrative inquiry investigator when assessing the credibility of the allegations made by the complainant and the police officers involved.

Based on the above, the Mechanism ruled that the rejection of a juvenile's allegations of mistreatment as unfounded by a findings report, based on a testimony of a witness with a general reference to his vivid character, is not reliably justified, as no equal distances are maintained with regard to the police officers' testimonies **(F. 252323)**. Also, the admission that the allegations of the complainant *"do not correspond to reality"* as they were not confirmed by the examined witnesses other than, mainly, police officers **(F. 252676)**, without providing reasoning to the report as to why those weigh more than the complainant's, affects the impartiality, effectiveness and objectivity of the administrative inquiry.

In a case of an EDE, where the Mechanism found a lack of non-police third-party witnesses and the lack of recording material from cameras that would constitute objective evidence material, it pointed out that any conclusion refusing disciplinary liability could only rely on **serious doubts** about the truth of the complainant's allegations, while the reference of the EDE report to speculations and possible grounds for retaliation on the part of the complainant raises doubts about the independent and thorough nature of the disciplinary inquiries **(F. 234634)**. With its respective remark on the serious doubts about the truth of the complainant's allegations, the Mechanism found in another case that after the completion of the PDE, the report was complemented with a reference to the serious doubts on the conflicting testimonies, which were pointed out by the Mechanism and the reference to the probability of unreliability of the detainees' complaint was eliminated and, in particular, the allegation that they filed a lawsuit due to the police officers' respective lawsuit against them (**F. 232460** and **232061**).

The Mechanism, in fact, has proposed **(F. 245786)** the completion of the report's final part with a statement that specifies (not just "the allegations are unconfirmed" but "the allegations are unconfirmed beyond any doubt") in its reasoning based on the existing testimonies, since the conclusion ap-

pears to be justified in terms of the testimonies' content, but also in terms of the principle of fair trial it invokes, and, in particular, the presumption of innocence.

Furthermore, however, in a case of administrative inquiry, the Mechanism found that the investigator adopted the testimonies of the investigated police officer and his colleagues almost word for word, ignoring, as if they did not exist, the testimonies of eyewitnesses and other witnesses, the forensic report and the relevant medical opinion, despite the relevant order of complementation of the PDE by the superior Service due to the insufficient reasoning of the initial report's proposals. Nevertheless, the completed report was as concise as the initial one, which is why the Mechanism found its reasoning unjustified, invoking the relevant ECtHR case law[108] which suggests that an investigation which is carried out by the police regarding the conduct of police officers and is mostly limited to testimonies of police officers cannot be considered impartial and, therefore, efficient.

Another problem found in witness testimonies in administrative inquiries is **the lack of necessary questions to the witnesses**. During the examination of the administrative inquiry file and having in mind the subject of the investigation and the content of the testimonies, the Mechanism has requested that witnesses are examined and questioned on specific issues for which they were not asked. Typically, the Mechanism had referred the PDE back for completion and had requested, among other things, to examine whether the investigated police officers had acted in defense against the complainants and whether they complied with the necessary measure of defense. However, the complemented PDE report and the individual reports showed that the witnesses who were summoned were not questioned in order to investigate and clarify the allegations. However, the completed PDE is investigating another matter, reviewing information related to the question and in the light thereof, while those involved that have testified as witnesses in the PDE have not been asked or talked about whether the police officers used violence and in what form, within the context of defense, and whether the measure of legal defense was upheld, which is a decisive criterion for the lawfulness of the police officers' actions. For this reason, it was referred back for completion **(F. 231694).**

In order to identify and evaluate the operational behavior of police officers in a violent incident regarding a transfer to a Police Department in the Re-

108. Emin Huseynov v. Azerbaijan case, 07.052015.

gion of Western Macedonia **(F. 249150)**, the Mechanism requested that the witnesses proposed by the complainant be additionally examined as to whether she had external scratches and whether she asked for a doctor while she remained in the Police Department and that she is examined on how she was immobilized and boarded the police vehicle and whether she bore marks or scratches because of that behavior. It also requested that the Police Department Head is examined as to whether he was informed of the transfer prior to or after the incident, which tasks on searches were entrusted to the Deputy Head, and that the investigated officers submit a complementary report – statement on the reason why they requested reinforcements from the Police Department, which of them intervened in the incident and which moderate means were used for the immobilization. In order to cross-examine the allegation of an investigated police officer, in another case regarding the restriction to the Police Department of a citizen for checking any pending judicial orders against him **(F. 264152)**, it was requested to verify the characteristics of the vehicle that transferred the citizen to the Police Department, through additional police officers' testimonies, pointing out relevant references to the testimonies of witnesses.

In another case, the Mechanism found that even though there were indication in the complaint, no questions about the behavior of police officers were asked to witnesses. In particular, the PDE report did not find that the allegations of humiliating treatment by police officers against the applicants were investigated, as the investigator relied on the fact that both the complainants and the other citizens involved testified that the police did not verbally abuse them and did not ask the citizens that were present at the incident to testify about what they perceived with regard to the complainants' allegations **(F. 244537)**.

The Mechanism, in a case of administrative inquiry, after invoking the relevant ECtHR case law on the independence of investigation[109] and the equal distances between testimonies, found that the findings report referred to

109. In order for an investigation to be effective, as required by the procedural parts of Articles 2 and 3 of the ECHR, those responsible for it must be independent and impartial both legally and in practice, which means that **there must not be hierarchical or institutional relationship with those involved in the events, but there should be independence from a practical point of view.** In this context, the ECtHR ruled that the police investigation for the perpetration of an offense **cannot be independent because the allegation of mistreatment was examined by the same police department where the alleged perpetrators of abuse came from** (see § 52 and 55 of the 10-4-2014 ruling on the LAYIJOV v. Azerbaijan case, no. F. 22062/07).

the contradiction in the complainant's allegations on the time of the reported act and did not attempt to explain the reference on a given time by referring to or researching the existing documents.

On the other hand, it did not find any contradictions in the allegations of the investigated police officer, nor did he investigate the distance of the investigated from the place of the offense. Also, while in the testimony of the eyewitness that was present in the incident between the complainant and the perpetrators, the witness was asked if he knew the investigated police officer, no photographs of the police officer were shown to him so as to verify if he was one of the persons the eyewitness saw meeting with the complainant and to confirm whether he took part in the alleged incident.

The Mechanism requested that the witness is additionally examined by showing him photographs **(F. 240324)**. Also, in another case where the infliction of physical harm and the possible mistreatment of a prisoner in a Police Department in Athens is being investigated **(F. 241553)**, the Mechanism, in its second referral of the administrative inquiry, after finding that the testimonies of all the police officers who came in contact with him did not mention scratches, which are proved by the photographs included in the administrative inquiry file, it requested that the relevant photographs are shown and that the police officers who carried out the transfer of the detainee are questioned as to whether he bore scratches – bruises on his face and limbs at the time he was transferred to the Correctional Facility.

Regarding the testimonies of the police officers, it should be noted that the Mechanism found that identical arguments are repeated in the testimonies of the police officers in the context of administrative inquiries. More specifically, in a case of investigation of violence against a detainee in police detention in Thessaloniki **(F. 254608)**, the Mechanism pointed out in its report that referred the administrative inquiry for completion, that receiving affidavits of the same or particularly identical content does not contribute to the establishment of an independent investigation. In another case of an administrative inquiry for the infliction of physical harm to a detainee in a Police Department in Athens, from his arrest until his transfer to a Correctional Facility **(F. 241553)**, the Mechanism found in its report that the testimonies of all the police officers serving in the Police Department (11 in total) showcase identical wording with regard to the care of the detainees. In a third case of administrative inquiry, it was found that although the investigator found that the written statements of the seven police officers involved were identical, he dismissed the allegations as unfounded and untrue and alleg-

edly accepted the testimonies and written statements of the police officers involved in the case in their entirety **(F. 244537)**.

In one case where the findings report included allegations made by police officers in their testimonies that police forces were not accepted for inspection inside cells by the detainees, the Mechanism pointed out that such an argument, in addition to preempting the object of investigation and presenting it as a given (since it considers finding objects and imposing sanctions a certainty), could be considered an indication of the non-elimination of stereotypes of "repressive" logic in the interpretation of the legal framework governing the action of the Hellenic Police and, therefore, its internal disciplinary control, and reiterated the Ombudsman's firm position[110] that this affects the procedure of evidence indirectly and negatively by undermining in advance its adequacy towards the investigation of disciplinary liability in every alleged behavior.

However, in addition to the identical wording, in two cases of administrative inquiries, the Mechanism found contrast between the statements of the police officers. In the first one, there was contrast between the testimonies of (two of the three) police officers in the context of the PDE and the criminal court **(F. 260526)**, which indicated that they were not eyewitnesses to the incident of violent conduct by their colleague. In the other case, there were differences between the testimony of the investigated police officer and his colleagues **(F. 251684)** in the context of the PDE.

A findings report on the use of a firearm during the equipment process before assuming duties was remarkable in terms of finding discrepancies between the reasoning and sentencing sections and the allegations **(F. 242598)**. The reasoning section of the supplementary report refers to the excellent professional behavior of the investigated police officer, the lack of purposeless shooting and the absence of danger. However, these points are in direct contradiction and, therefore, contradict the points of the reasoning section that mentions that the investigated police officer did not take all the necessary security measures and did not check to the firearm as he should have, that he obviously made a mistake and that elements of negligence can be found. The contradiction culminates in the sentencing part, where the investigator concludes that the investigated police officer is disciplinarily liable, proposing disciplinary sanctions.

110. Special Report of the Greek Ombudsman, 2004, "Disciplinary - Administrative Investigation of Allegations against police personnel", p. 67-68, https://www.synigoros.gr/resources/docs/astinomikoi.pdf

Suspension of the disciplinary procedure until a report is issued by the National Mechanism for the Investigation of Arbitrary Incidents

One last issue concerning the internal procedure of administrative investigation after Law 4443/2016 is the suspension of the issuance of a decision on the findings of an administrative inquiry until a report is issued by the Mechanism. In a case of administrative inquiry **(F. 250034)**, the Mechanism found that the investigation did not need complementation based on the PDE report sent to the Mechanism (the conclusion is justified based on the testimonies of the witnesses examined, independent witnesses were summoned and the findings report is not based solely on police officers' testimonies, the PDE investigator assessed and justified the medical findings in relation to the necessary measure of force used, based on the complainant's conduct), but it was pointed out for the future that the provision for the suspension of a decision until the issuance of a report by the National Mechanism for the Investigation of Arbitrary Incidents constitutes an essential element of the procedure, the violation of which is a reason for annulment of the relevant decision.

4.3. Independence of the disciplinary trial

Article 48 par. 1 of Presidential Decree 120/2008[111] provides for the independence of the disciplinary procedure from criminal or other proceedings. Additionally, Presidential Decree 111/2019 (A' 216) provides that the criminal procedure cannot suspend the disciplinary procedure, but the authori-

111. *"1. The disciplinary procedure is independent of criminal or other proceedings. 2. The disciplinary authority shall be bound by the judgment of an irrevocable criminal court decision or by an irrevocable acquittal decree, only with respect to the existence or non-existence of factual incidents which establish the objective nature of a disciplinary offense. In any other case, the criminal court's judgment may be taken into account during the disciplinary procedure, but the disciplinary authority may issue a decision that differs from the criminal court's judgment".* 3. "The criminal trial does not suspend the disciplinary procedure, but in a case where a summons has been served in accordance with the Code of Criminal Procedure, the authorities responsible for exercising disciplinary proceedings under par. 2 of Article 22 and the competent disciplinary authorities may, if deemed necessary, issue a revocable order for the suspension of the disciplinary procedure for no more than a year. The time of suspension shall not be taken into account for the calculation of the limitation period and shall be independent of the time of suspension provided for in Article 7".

ties responsible for exercising disciplinary proceedings and the competent disciplinary authorities may, exceptionally, issue a revocable order for the suspension of the disciplinary procedure for one year if a summons has been served in accordance with the Code of Criminal Procedure.

The Mechanism pointed out the need to highlight the established autonomy of both procedures in cases of administrative inquiries it reviewed in 2019. In one case, the findings report cited the judgment of the Criminal Court as necessary for assessing whether disciplinary offenses were committed by the investigated police officers, considering the Criminal Court as the only authority responsible for deciding on the existence or non-existence of the incidents that establish the objective and subjective nature of the crimes - criminal offenses attributed to the police officers, so that there are grounds for disciplinary action **(F. 249150)**. The Mechanism, through its relevant report, found that the PDE investigator confuses the two procedures and ignores both their independence (which is provided by Article 48 of Presidential Decree 120/2008) and their different scopes. The scope of the disciplinary procedure is broader, as it is determined by the civil servant's functional mission.

It reiterated the general theory's view[112] that the disciplinary body in charge of a disciplinary investigation must respect the presumption of innocence but may not unconditionally accept the outcome of a criminal trial without taking the broader scope of the disciplinary procedure into consideration. It also highlighted the Conseil d'Etat case law[113] on the commitment deriving from a criminal court's decision, based on the provision of Article 48 of Presidential Decree 120/2008 and the compatibility with the provisions of the Constitution and the ECHR (and, consequently, not even in Article 6 par. 2 which establishes the presumption of innocence). Therefore, it concluded that the report should not refer to a future criminal court decision (for which Articles 48 par. 2 and 49 of Presidential Decree 120/2008 would

112. A. Papadamakis, the relation of disciplinary procedure and criminal trial, honorary volume for Professor N. Kourakis, Crime and Crime Suppression in a time of crisis, Volume A', Ant. N. Sakkoulas, p. 530.

113. Conseil d'Etat Plenary Session 4662/2012, § 20 on an application for annulment of Presidential Decree 120/08, the judgment of the criminal court though an irrevocable decision or acquittal decree shall bind the disciplinary authority only with respect to the existence or non-existence of factual incidents. In any other case, the criminal court's judgment may be taken into account during the disciplinary procedure, but the disciplinary authority may issue a different decision, as provided by Article 48 par. 2 of Presidential Decree 120/2008.

apply), but that it must justify its judgment on the existence or non-existence of sufficient evidence for the commitment of disciplinary offenses provided by Presidential Decree 120/2008, which could, in the PDE investigator's judgment, apply to the alleged behavior of the police officers without being bound to legal characterizations included in the written complaint or lawsuit of the complainant. Therefore, the investigator may decide on the application of provisions of Presidential Decree 120/2008 at his own discretion, as long as he provides justification based on the facts of the case.

In another case **(F. 249152)**, the Mechanism pointed out the autonomy in conjunction with the concept of civil service duty, which is an essential element of the concept of disciplinary misconduct (see Article 4) and also wider in scope and different from the concept of crime under Article 14 of the Penal Code, as the findings report invoked the argument that the disciplinary misconduct of the police officers involved would at the same time constitute a criminal offense, although the written notification by the Prosecutor's Office indicated that there is no criminal case against any police officer. By citing the ECtHR case law[114], that the acquittal of a police officer involved in an incident is linked to the presumption of innocence, but does not relieve the State of its responsibility under the Convention, the Mechanism noted that the dismissal and non-prosecution must be taken into account but is not an obstacle for the disciplinary investigation, the judgment on any disciplinary liability, provided that there is evidence to that effect, and the imposition of disciplinary sanctions.

In the third case **(F. 264152)**, the Mechanism deemed it necessary to highlight the independence of procedure, because it found that the de facto attachment of the disciplinary procedure to the respective criminal procedure violates the autonomy of both procedures under Article 48 of Presidential Decree 120/2008. In more detail, in this case, the conduct of a PDE was ordered in 2016, following the competent Prosecutor's order to conduct a parallel criminal preliminary investigation. The PDE was further proposed to be converted to an EDE by citing the conduct of the criminal preliminary investigation. The order for further criminal preliminary investigation in 2017 contained the competent Prosecutor's request for the attachment of copies of the EDE findings report. The competent disciplinary authority decided to suspend the EDE for one year, until a decision of the criminal court is issued in the first instance.

114. 21-6-2007 ruling on the I.K. v. Greece case, no. F. 27850/03, § 58.

Suspension of the disciplinary procedure due to criminal proceedings

Another issue arising from the independence of the two procedures is the **suspension of the disciplinary procedure due to criminal proceedings**, under Article 48 par. 3 of Presidential Decree 120/2008 (as in force at the time). In a PDE case of unlawful use of force and unlawful detention in North-eastern Attica **(F. 233673)**, the PDE report proposed the suspension of disciplinary proceedings under Article 48 par. 3 of Presidential Decree 120/2008 in order to take into account the criminal court's ruling for the safe and fair judgment on the case. The certificate from the Prosecutor's Office, which was included in the PDE file, showed that the case file was still pending for assignment to a judge following the criminal preliminary investigation. The Mechanism noted that the judgment on the necessity of suspending the disciplinary procedure is not justified and even though it is up to the disciplinary authority's discretion, the relevant provision requires a justification of necessity in order for the rule of independence of the disciplinary procedure not to be abolished. In addition, Article 48 par. 2 of Presidential Decree 120/2008 refers to **"criminal trial"** and not to preliminary proceedings, so the **prosecution** is a precondition for suspending the disciplinary procedure.

In three other cases – a PDE for a complaint against a neighboring police officer for threats, verbal abuse and physical harm **(F. 236639)**, a PDE for mistreatment with possible racist motives by police officers in Athens **(F. 237555)** and EDE for the injury of protesters during a demonstration in Athens in 2019 **(F. 255601)** – the Mechanism made the same remarks regarding the prosecution of the criminal case, although the reasoning for the necessity of suspending the disciplinary procedure was justified, due to the conflicting versions regarding the circumstances of the incident and the difficulty of forming a safe legal conviction by the person conducting the PDE. On the contrary, in a case of PDE for injuries during the transfer to a Police Department of West Attica **(F. 244702)**, following a quarrel with police officers, the Mechanism found that between the initial report and the complemented report, the PDE investigator did not take additional action in the context of his investigative duties, and therefore observed that the differences in the two reports and, in particular, the initial dismissal of the disciplinary case that was subsequently converted to suspension until the relevant criminal trial, under Article 48 par. 3 of Presidential Decree 120/2008, in conjunction with the complete absence of reasoning for this conversion, essentially weaken the whole disciplinary procedure and deprive it of meaning by relying on its criminal aspects.

Failure to file a complaint or date of filing a complaint

Apart from the suspension of the disciplinary procedure, the cases reviewed by the Mechanism have shown that the administrative inquiries investigators often place particular emphasis on **criminal proceedings findings** in order to draw conclusions, which either do not relate to the investigated conduct of police officers, but to the detriment of the individual - complainant, or relate to the lawsuit filed against the police officers ie. its non-submission or the deadline for submission or the reasons for its submission. In a case of administrative inquiry for injuries of police officers of a Police Department in the Region of Central Greece, against whom (and against other police officers of the same Police Department) a suit was filed for physical harm, property damages, defamation and false denunciation **(F. 261394)**, it was found that the reasoning of the PDE report repeats the argument that the complainants were convicted by a Three-Member Misdemeanor Court and that the allegations had already been taken into account in the criminal trial. However, the Mechanism, by invoking Article 48 of Presidential Decree 120/2008, noted that the existence of a criminal court decision with different content[115] which was directed against different persons and not against the police officers who are being prosecuted as part of the disciplinary procedure, does not bind the disciplinary authority as to the facts, but may be taken into consideration by the disciplinary authority.

In a case of administrative investigation of a protester's head injuries due to a blow by a police baton during a demonstration in Thessaloniki in 2017 **(F. 235596)**, the administrative inquiry file showed that the First Instance Prosecutor's report to the Prosecutor at the Court of Appeal in 2018 that proposed the dismissal of the case following a preliminary investigation (due to media publications) referred to the fact that the injured person did not file a suit and that he was a suspect for the crime of disturbing the peace (Article 189 of the Penal Code). On the contrary, the EDE file indicated that the victim had already filed a suit against unknown perpetrators in 2017 and that, in 2018, the relevant criminal case file for dangerous physical harm was re-submitted to the First Instance Prosecutor's Office by the Directorate of Internal Affairs, following the victim's suit, which was pending.

115. The judgment of the Three-Member Misdemeanor Court investigates the facts from the point of view of the prosecution, while, during the trial, the defendants were not represented by a lawyer and the allegations they made during their apology were not thoroughly examined and they were ultimately convicted.

The non-submission of a lawsuit against police officers is also mentioned in another PDE report, about physical violence and mistreatment that the complainant and minors she represented allegedly suffered **(F. 260526)**. The Mechanism observed that the complainant, as well as other lawyers, had filed complaints about the incident on the day it took place, before the competent Police Services, requesting investigation. The competent authorities in the PDE file did not appear to have provided an answer, much less to have proceeded to an internal administrative inquiry into the reported incident, as required by the right to petition, pursuant to Article 23 par. 2 of Presidential Decree 120/2008 ("police disciplinary law") and the Greek Constitution (Article 10).

In two cases of administrative inquiries, the Police investigator commented on the date of filing the suit. In the first one **(F. 261394)** he mentioned that it was submitted on the last day of the three-month submission deadline, while it could have been filed earlier and, specifically, within the time limits of the flagrante delicto procedure or during the detention in the Police Department or the next day during the hearing before the court, and that the suit was pending before the Court, following a preliminary criminal investigation. The Mechanism noted that the purpose of this argument was not clear, since submission on the last day of the deadline does not affect its validity, and that it is up to the discretion of the complainants to choose the time of submission within the prescribed deadline and there was time to include the complaint as an object of investigation by the PDE, even if the time of submission did not allow for the flagrante delicto procedure. Moreover, its content described a completely different version of the incidents, which, despite not been confirmed by eyewitnesses, however, raises some questions about the conduct of police officers that should be adequately investigated and answered under Article 24 par. 1 subpar. a' of Presidential Decree 120/2008.

In the other case, the PDE report commented on the submission of the complaint nine days before the expiration of the three-month deadline and assessed it as a questionable element and presumed that it was submitted for reasons of retaliation and distraction with the ulterior motive of investigating the police officers for disciplinary offenses and prosecuting them for criminal acts **(F. 249150)**. The Mechanism pointed out that this assumption could be seen as stereotypical interpretation, since the exercise of a right before the competent authorities (that are not police authorities) cannot be presumed to constitute retaliation and distraction against the police, but the relevant reasoning must be justified with arguments. After all, both the disciplinary and the criminal procedure aim to seek the truth and this does not necessarily mean that they will lead to the guilt of the investigated persons.

The legislative provision for the submission of complaints before various authorities also ensures that the citizens are not discouraged from filing a complaint due to the circumstances they find themselves in, even if they are arrested or detained.

Accusations of disobedience or resistance against the complainant

Another important issue that arises from administrative inquiries that the Mechanism reviewed is the application of the existing provisions of the Penal Code and the Code of Criminal Procedure (in cases of disobedience or resistance against authorities, **F. 260526, 251684**) in cases where citizens react to excessive searches against themselves or their fellow citizens. Typical is the case of an administrative inquiry concerning the injury of an individual by police officers, whom she had a quarrel with at her house, when they visited in order to serve a fine against her husband, due to a traffic violation **(F. 247702)**. When she later (at 20.00) arrived at a Police Department of West Attica along with her husband in order to file a complaint against the police officer - driver of the police vehicle, she was arrested and detained under the flagrante delicto procedure, until the next day at 01.30, since the investigated officer, who, in the meantime, had departed from work, due to the end of his shift at 22.00, had filed a lawsuit against her for disobedience. The report referred to insults and threats allegedly made by the complainant against the investigated police officer during her arrival at the police station, where she voluntarily went in order to sue him. The Mechanism also found contradictions in the testimonies of the colleagues of the investigated police officer, as the majority of those stated that the complainant's husband was taken out of the police department after her arrest, while the testimony of another police officer indicated the opposite. Taking these specific issues into consideration, the Mechanism made the remark that they not only underscore the shortcomings of the disciplinary procedure over the investigation and verification of the facts but they also **create impressions about the manipulation of penal law, thus weakening its safeguarding role. Such a development, in turn, favors the marginal or even abusive use of police status, affecting the results of Police action accordingly and, in this case affecting the lawfulness of the complainant's detention.**

In the context of an EDE, the Mechanism considered the rejection of an individual's allegations of getting assaulted when he intervened in favor of a foreigner who was getting assaulted by police officers in the center of Athens

in 2017 **(F. 236970)**, as an **indication of a general phenomenon of citizens getting targeted** by police officers when they react to excessive searches against themselves or their fellow citizens. The reaction of the police officers allegedly included threats (which the EDE investigator did not consider as proven) that the third person would face justice for obstructing arrest and even for complicity in drug trafficking should he not go on with his own business. It also included the violent removal of the complainant's mobile phone and, at least, his mistreatment, if not an assault. For this reason, the Mechanism noted that the misconduct found, even if deemed only as "improper conduct", should result in the appropriate sanction.

However, in another case, the manipulation of disciplinary law and the targeting of a citizen prove to be more extensive. Specifically, in a PDE concerning an allegation (and suit) of a citizen in 2018 for suffering physical injuries at the stairs of a Police Department in the Region of Eastern Macedonia and Thrace, in the context of his arrest for violating a red signal, the Mechanism found a series of coincidences in the case and highlighted the main one: two police officers off duty, allegedly performed a vehicle inspection for dangerous driving behavior due to a red signal violation, without, according to their testimonies, knowing that it concerned the same person they had previously inspected at a bar, while off duty, because they thought that he was recording them with a mobile phone. The complainant was arrested for resistance, disobedience, illegal possession of a weapon, while there was no recorded material from traffic cameras in the file, nor a corresponding incident recorded by the Traffic Police, while the Traffic Department's notice was not disputed as having been served sometime later.

The findings report of this administrative inquiry made references with regard to the arrested individual's sexual life and the Mechanism pointed out that such personal information is under special protection by law as a special category, according to Article 9 of the General Data Protection Regulation, while any exceptions for reasons of public safety, enforcement of penal law etc. are narrowly interpreted. The possession of sexual products by the complainant is completely irrelevant to the charges against him and the references to them violate the principle of proportionality with regard to the **protection of personal data**. Therefore, **it was recommended to remove** the relevant reference from the PDE report. Personal data that are not causally related to the investigated incident are not just unnecessary, but may also violate the principle of impartiality of investigation into allegations of arbitrary incidents.

5

Independent investigations of the national mechanism

5. Independent investigations of the national mechanism

The possibility of the National Mechanism for the Investigation of Arbitrary Incidents to conduct its own independent investigation of complaints about arbitrary incidents was provided in Law 4443/2016 as an alternative to referring complaints to the Administration and monitoring of the relevant PDE or EDE. In any case, after the Ombudsman's case-file report, the disciplinary procedures laid down for each administrative authority are following. According to the Explanatory Memorandum of Law 4443/2016, the Independent Authority does not substitute the disciplinary bodies of the Administration in accordance with the principle of the *juge naturel* in disciplinary proceedings, while the Ombudsman is a mechanism parallel and complementary to (internal) disciplinary control, with increased constitutional guarantees of independence.

In 2019, 5 autonomous investigations by the Ombudsman were under way for complaints concerning:

- Physical injuries of foreigners with a possible racist motive during the 2017 acts of repression in Lesvos.
- Mistreatment with possible racist motive of foreign detainees in 2017 at a Pre-Departure Centre.
- Infringement of a detainee's health in 2018 in police detention in Attica.
- Use of violence and serious violation of the human dignity of a detainee in 2017 when police officers obtained a DNA sample.
- Mistreatment of a detainee and unethical and incomplete medical treatment in a Pre-removal Centre in 2018.

As part of these investigations, the Ombudsman carried out a search for evidence, an evaluation of disciplinary investigations, while in 3 cases requested the investigation to be completed due to material deficiencies. In all cases, the need to strengthen the institutional tools of the independent investigation of the Ombudsman was detected, which was finally introduced by Law 4662/2020.

Personal search, restriction to the police department and suppression of protests in November and December 2019 led to multiple complaints to the media and the Ombudsman. The National Mechanism was informed in December on the relevant orders for disciplinary investigation from Police Headquarters and requested the Police to act in respect of all the complaints that came to light and had been brought to its attention. It also pointed out the information necessary in order for the investigations carried out by ELAS to be considered complete and thorough. At the same time, the Ombudsman requested to be informed in advance on particular critical evidence (forensic reports, video footage, conversations with the call center, etc.), in order to assess its next actions, in view of the impending change of the relevant legislative framework of his investigation. After the publication of Law 4622/2020, ELAS's response to the requested data is expected.

6

Execution of ECtHR decisions

6. Execution of ECtHR decisions

The Ombudsman, within the framework of its special competence as a National Mechanism for the Investigation of Arbitrary Incidents, also takes up cases in which a decision has been issued by the European Court of Human Rights (ECtHR) for breach of the provisions of the European Convention on Human Rights (ECHR), which identifies shortcomings in the disciplinary procedure or new elements that have not been assessed in the disciplinary investigation. In such cases, the axiom of non-prosecution for a second time for the same disciplinary misconduct (ne bis in idem) is bent, that applies as well in case there was a substantial defect in the procedure. The Ombudsman may, in this context, decide the case to be reviewed by the disciplinary bodies concerned in order to bring or complete disciplinary proceedings and to impose the appropriate disciplinary sanction, regardless of the initial hearing of the case.

This particular competence was supplemented by the recent Law 4662/2020[116], as follows: a) The three aforementioned cases were explicitly provided in which the axiom of ne bis in idem is bent in accordance with Article 4 of the 7th Protocol to the ECtHR as ratified by Greece. (b) It was also explicitly provided for the administration's commitment to the legal characterisation of the act under investigation as held by the ECtHR, pursuant to relevant proposal of the Ombudsman in its previous report. The Ombudsman had highlighted the need for a uniform implementation of the case law in our legal system when examining compliance with the judgment of the ECtHR Zontul vs Greece, which was brought before the National Mechanism. (c) The obligation of the Personnel Directorates of the respective entities, which transmit the judgment of the ECtHR and the relevant disciplinary file [117] to the Ombudsman, has been identified to point out the particular periods of suspension of the limitation period and the occurrence of a limitation period.

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116. In regards to all the changes brought about by Law 4662/2020 in the framework of the operation of the National Mechanism for the Investigation of Arbitrary Incidents, see relevant section of legislative developments, in this report.

117. See Special Report of the National Mechanism for the Investigation of Arbitrary Incidents, 2017-2018, pp.46-48, 89.

It is clear from the above that the Ombudsman is a Mechanism for the execution of ECtHR decisions concerning individual compliance measures, and solely in this field, for the disciplinary investigation of the specific conduct assessed by the Court. General compliance measures are a decisive responsibility of the Government.

It should also be noted that in case of enforcement of judgments of the ECtHR, the Ombudsman cannot act of his own motion, unlike complaints of arbitrary incidents of the law at issue. The activation of his competence to decide the resumption of disciplinary proceedings requires the transmission of the relevant decision of the ECtHR and the case file by the Administration.

In 2019, one Decision of the ECtHR was forwarded to the National Mechanism, Sarwari and others vs Greece on 11.4.2019 (Appeal No 38089/12). This case concerned a complaint of mistreatment covered by Article 3 of the ECHR (prohibition of torture, inhuman or degrading treatment) on 14 and 15/12/2004, of ten Afghan nationals by police officers searching for a fugitive in the building where they were staying. In particular, they complained that were beaten with kicks and punches as well as with sticks in various parts of their bodies, while one of them complained that he had been abused at the police station, where he was beaten with kicks, punches and with a watering rubber, in order to get information about the fugitive. A PDE was carried out for the police officers involved on the actions of Articles 137A and 137B. In the end, the appellate disciplinary board imposed a suspension penalty with dismissal to the first two police officers, a fine of 150 euros to the third one, while no penalty was imposed to the fourth one.

The ECtHR ruled that there had been a breach of Article 3 of the ECHR in both its substantive and procedural part, for the majority of the defendants. The Court notes, in particular, shortcomings in criminal proceedings, for which the Ombudsman does not have jurisdiction. As for disciplinary proceedings, the Court generally rules on:

(a) that '... the. ... disciplinary system, as applied in the present case, has proved to be far from strict and could not contain a deterrent force capable of ensuring the effective prevention of unlawful acts'. The ECtHR pointed out that disciplinary penalties were significantly reduced on the appellate disciplinary board but even the reduced disciplinary penalties were not enforced because the police officers involved had since dismissed from service.

(b) The forensic opinions 'lacked accuracy and their quality was significantly lower than that recommended by the CPT rules and the Istanbul Protocol guidelines' (para. 118).

The Court stresses once again that proper medical testing on the victim constitutes an essential guarantee against mistreatment for persons in temporary detention. For this reason, (a) the testing should be carried out by appropriately qualified doctors, (b) a police representative should not be present during the testing, (c) the physical injuries found, the explanations given by the patient as to how they were caused, as well as the doctor's opinion on the compatibility of the injuries with these explanations should be recorded at the medical report. The Ombudsman therefore concludes that the poor quality of the forensic reports is indeed a substantial defect in the procedure and the relevant misconduct have not reached the limitation period.

However, in this case, the Ombudsman, as the Mechanism for the Investigation of Arbitrary Incidents, considered that a disciplinary review of the case would be ineffective, because it could not lead to the correction of the irregularities highlighted by the ECtHR. In particular, disciplinary penalties can no longer be enforced, since the police officers involved are no longer in the service, and the forensic expert opinion, by its very nature, cannot be repeated in accordance with the court's standards.

In order to avoid similar phenomena in the future, the Ombudsman recommended the Police to undertake general compliance measures. In particular, (recommendation was made) to raise awareness among the disciplinary bodies on the particularly serious nature of the felonies of Articles 137 A and 137 Penal Code, aiming to compliance with the principle of proportionality as for the disciplinary penalties imposed on offenders. (Recommendation was made to) consider issuing circulars and instructions on the need to carry out the medical expert opinion carefully and further evaluate medical certificates in the disciplinary investigation of similar complaints in relation to the applicant's claims, including ascertaining the origin of the injuries found and other analytical guidance provided in the aforementioned decision of the ECHR. Finally, there should be financial consequences for those who have dismissed from the service and are no longer subject to disciplinary proceedings, following a conviction of the ECtHR (see National Mechanism report 2017-2018 p.65).[118]

118. https://www.synigoros.gr/?i=human-rights.el.files.585783.

7

Legislative proposals and developments

7. Legislative proposals and developments

7.1. Amending the legislation on the National Mechanism

The experience of the first implementation of the legislation (Article 56, Law 4443/2016, A'232), which came into effect on 9.6.2017, highlighted the need to further enhance the effectiveness of the National Mechanism for the Investigation of Arbitrary Incidents with human resources and institutional means, in order for the Ombudsman to be able to effectively conduct an independent investigation, as itself proposed as early as October 2018[119], reiterating its proposal to the Government after the national elections in July 2019.

Strengthening as such the National Mechanism is also a firm request of the Council of Europe (as occurring from the decision of the Committee of the Council of Ministers of 4-6.12.2018 on compliance with the decisions of the ECtHR of the Makaratzis Group[120], the report of 10.7.2019 on policing in Greece[121] and the report of 19.7.2019 of the Council of Europe Committee on the Prevention of Torture (CPT), following its visit to Greece in March and April 2019).

The Ministry of Citizen Protection took a legislative initiative in early 2020, responding positively to the Ombudsman's proposals. It is about article 188 of Law 4662/2020 (A' 27/7.2.2020), which brings about significant proofing on this special competence of the Ombudsman with institutional means. In particular:

Harmonisation of the grounds of discrimination is brought about, as for the conduct that is controlled by the National Mechanism, as discrimination is defined in Part A of Law 4443/2016 (Article 2), which incorporates the rel-

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119. (See the first special report of the National Mechanism for the Investigation of Arbitrary Incidents, for the period 9.6.2017-31.12-2018, p. 85 et seq. https://www.synigoros.gr/?i=human-rights.el.files.585783).

120. In the 4-6.12.2018 Decision of the Commission of the Council of Ministers on compliance with the decisions of the ECtHR of the Makaratzis Group, see the general proposals on compliance (par.9, a, b, c) https://hudoc.exec.coe.int/eng#{"EXECIdentifier":["004-15563"]}.

121. https://www.coe.int/en/web/execution/-/professional-policing-in-greece.

evant Directives on the application of the principle of equal treatment[122], supplementing cases of discrimination on grounds of **other beliefs, chronic condition, age, family or social status**). It also clarifies the concept of the act under investigation, which in disciplinary law concerns unlawful and culpable acts or omissions[123], in order to dissolve any doubts as to the interpretation of the law.

The nature of the competence does not change, since the Ombudsman continues, as it did in Law 4443/2016, to be a parallel, external investigative and control mechanism, without replacing the disciplinary bodies. Those involved in arbitrary incidents shall continue to be subject to the relevant disciplinary bodies of each Administrative body, in accordance with the principle of *juge naturel* and the disciplinary jurisdiction.

Substantial changes, however, occur in the procedure and the means of investigation of the Ombudsman as a National Mechanism, which is now equipped with the express possibility of subpoenaing witnesses, conducting an on-site inspection, ordering an expert opinion, and in particular, receiving sworn testimony of witnesses and written or oral explanations from the persons involved[124]. These institutional instruments constitute a necessary assurance that the Ombudsman's investigation shall not fall short of the procedure and evidence before the disciplinary bodies of the members of the security forces.

This ensures in practice that the National Mechanism can provide for the possibility of conducting a separate investigation. The same purpose is served by the possibility of access to the pre-interrogation material, for the completeness of the Ombudsman's investigation, which, apparently, consists a waiver of secrecy and therefore shall be used exclusively for the fulfillment of the mission of the National Mechanism for the Investigation of Arbitrary Incidents. Likewise, the possibility of an investigation in parallel with any criminal proceedings (is established) in para. 2 of Article 188, in order for the Ombudsman not to have less powers than the disciplinary bodies of the Administration, for which the continuation of disciplinary proceedings

122. Directives 2000/43/EC, 2000/78/EC, 2014/54/EU.

123. (see Article 4 par.1 pd 120/2008, Disciplinary Law of Police Personnel, A' 182, Article 106 Code on the Status of Civil Servants, Article 38 par.11 Law 4504/2017, A΄184, regarding the officers of the Coast Guard).

124. without prejudice to the powers of other institutions in the context of the pre-litigation procedure pursuant to the CPP (see powers of special investigators under Articles 34, 183 and 251 CPP).

is established as a rule, on the basis of the fundamental principle of the independence of disciplinary proceedings from criminal proceedings, and the different purposes they perform in the legal order (see Article 48 pd 120/2008, Disciplinary Law of Police Personnel, A' 182, Article 114 Code on the Status of Civil Servants, Article 38(7) Law 4504/2017, A΄184)[125].

An arrangement is also introduced that if the Ombudsman ascertains an unjustified deviation from its findings, it may forward the investigation file to the Minister concerned for any exercise of his disciplinary authority over the officers in question. The referral of the case to the Head of the Administration is a safeguard for its internal investigations.

In order to strengthen compliance with the rulings of the European Court of Human Rights, it is proposed the Administration to be bound by the legal characterisation of the misconduct given by the ECtHR, in order to ensure unity in the application of case-law in the legal order, since this need has been identified in the past by judgments of the ECtHR raised before the National Investigation Mechanism, as it was the case in Zontul vs Greece[126]. Since the resumption of disciplinary proceedings, in compliance with relevant judgments of the European Court of Human Rights, is subject to the axiom of non-prosecution for a second time for the same offence (ne bis in idem), it is appropriate for systematic reasons to add at this point the cases in which ne bis in idem is being bent (new evidence or evidence revealed ex post or existence of a substantial defect in the procedure), in accordance with Article 4 of the 7th Protocol of the European Convention on Human Rights as ratified by Greece.

Welcoming this legislative amendment, the Ombudsman noted, however, that the increased investigative requirements on behalf of the National

125. The principle of the independence of disciplinary proceedings from the criminal proceedings guaranteed by the above provisions of the relevant disciplinary law of each body, the need at least for equal institutional means as for investigation between the disciplinary body concerned and the National Mechanism as an external, parallel body for the investigation of incidents, which constitute disciplinary misconduct irrespectively of their criminal treatment, seems to have been overlooked by the Service of Experts of the Parliament, which in a report on Law 4662/29 sounded the alarm of unconstitutional provisions, inter alia, in regards to these two legislative arrangements, from a perspective of Articles 96 and 26 of the Constitution, misconceiving the above as competence to 'investigate crimes'. https://www.hellenicparliament.gr/UserFiles/7b24652e-78eb-4807-9d68-e9a5d4576eff/e-diahkris-epist.pdf

126. (see special report of the National Mechanism for the Investigation of Arbitrary Incidents, 2017-2018, pp. 46-48, 89).

Mechanism for the Investigation of Arbitrary Incidents require a strengthening of its staffing in order to be able to fulfill its mission.

The text of Article 188 of Law 4662/2020[127] alongside with the full description of the means of exercising the powers of the National Mechanism for the Investigation of Arbitrary Incidents is included in the Annex of this report.

7.2. Partial acceptance of proposals to amend disciplinary law

Amendment of disciplinary law of police personnel on the basis of legislative proposals for improvement by the National Mechanism for the Investigation of Arbitrary Incidents.

In its report for the years 2017-2018[128], the Mechanism, drawing on the observations made in its documents and findings in all cases dealt with, it included a series of proposals to improve specific issues relating to matters of disciplinary law and matters of status of the staff.

Inter alia, provisions of p.d. 120/2008 on the disciplinary law of police personnel were amended and the proposals of the Mechanism were taken into account for these amendments by pd 111/2019 (A' 216). This section of the report will examine in detail which proposals were accepted, leading to disciplinary law to be amended and to what extent and which proposals were not adopted, as mentioned in the previous report.

7.2.1. Ensuring the impartiality of the PDE

The Mechanism, in response to cases related to allegations of mistreatment in the form of infringements of physical integrity or health which do not constitute crimes under Article 137A PC but lesser harm caused by police officers, found that the corresponding administrative inquiries of ELAS were mainly assigned to a senior or superior to the police officer under investigation, who did not necessarily belong to a different Police Directorate. In order to ensure the objectivity of the investigation and the impartiality of the

127. Article 188(1) replaced Article 1 of Law 3938/2011, as in force after its replacement by Article 56 of Law 4443/2016 and the establishment of the competence of the National Mechanism for the Investigation of Arbitrary Incidents.
128. https://www.synigoros.gr/resources/docs/emhdipa_2017_2018_gr.pdf , p. 63.

investigating body (in addition to its higher position in hierarchy, a condition that was followed in practice), the Ombudsman proposed the appointment of an officer of a different Directorate[129] in all kinds of internal investigation and not just in EDE. In particular, it proposed a similar provision to article 26(4) of P.D. 120/2008 (EDE for crimes referred to in Article 137A PC) to be added to Article 24(2) on PDE concerning misconducts related to mistreatment and to make express reference to the offences of Articles 10 (1) and 11 (1). The Mechanism recognised that there might be objective difficulties in fully implementing this recommendation, such as distance and location (especially on islands), but considered that the nature of the misconducts and the seriousness of the complaints should not allow any objections to be raised.

This specific proposal of the Mechanism has been accepted. The Article 1(1) of p.d. 111/2019 (A' 216), with the addition of a third subparagraph to Article 24(2) of p.d. 120/2008, provided that PDE conducted on the determination of any disciplinary misconduct, as provided in Article 10 (1) c and 11 (1) ia of p.d. 120/2008, committed against citizens, shall be appointed to an officer of a Directorate or an equivalent Department, other than the one of the police officers involved.

This amendment is undoubtedly moving in the right direction and reflects the spirit of the Mechanism's proposal, since it includes not only the disciplinary misconduct referred to in Article 10(1) c of p.d. 120/2008 (i.e. acts constituting torture and other violations of human dignity under Article 137A PC) but also any brutal behaviour which does not fall under it (even less serious), since the misconduct referred to in Article 11(1) ia of p.d. 120/2008 was included ('brutal behaviour towards equivalent grade officers, subordinate officers or citizens, if it does not fall under indent c' of para. 1 of the Article at issue"). In order to cover any case of mistreatment involving inter alia use of physical violence, the regulatory text could include in the newly added subparagraph the indent z' of para. 1 of Article 11 of p.d. 120/2008,[130] since in the provisions of Article 10(1),h and 10(3) many of the misdemeanors

129. Since this was not necessarily provided for by p.d. 120/2008 as for PDEs, but only for EDEs relating to disciplinary misconduct provided for in Article 1(1)(c) of the same p.d. (i.e. for acts constituting torture and other violations of human dignity), Article 26, para. 4 expressly provides solely the appointment of an officer of a Directorate or an equivalent Department, other than the one of the police officers involved.

130. *'An intentional commission or attempt to commit a misdemeanor, punishable by a sentence of imprisonment of at least three (3) months, should this act does not fall within the scope of the preceding Article.'*

provided for in the Special Part of the PC, crimes against physical integrity (simple, dangerous and basic form of grievous bodily harm) and personal freedom (unlawful violence, threat) could in this case be subject to Article 11, given that in Article 10(1) h' the misdemeanors are listed and the above are not included.

The interpretation of this very indent added by p.d. 111/2019 seems self-evident for the Mechanism, i.e. that the phrase "the PDE carried out to determine whether disciplinary misconduct has been committed" does not require any further formalities for the order of such a PDE, as the purpose and subject of an investigation of a PDE are defined in paragraph 1 of Article 24 of p.d. 120/2008. Therefore, even in a 'case that misconduct is just probable or there is no clear indication of disciplinary misconduct', which, pursuant to the competent authority for ordering a SDP, could be subject either to Article 10(1)(c) of p.d. 120/2008 or to Article 11(1) ia of p.d. 120/2008 on the basis of the newly added subparagraph, a PDE shall be ordered and appointed to an officer of a Directorate or an equivalent Department, other than the one of the police officers involved. If, on the other hand, there is clear evidence of the commission of the abovementioned disciplinary misconduct and higher disciplinary penalty is provided for in both cases, pursuant to Article 26(2) of the p.d. 120/2008, an EDE should be ordered, while a PDE cannot replace the EDE, by ensuring the impartiality-distancing of the conducting person.

7.2.2. Suspension of disciplinary proceedings due to criminal proceedings

In regards to the use of the provided suspension of disciplinary proceedings on the grounds of parallel criminal proceedings, it was pointed out by the Mechanism that the discretion of the competent body to suspend disciplinary proceedings is subject to a necessity test so as not to abolish the autonomy of these two proceedings. Also, in the case of criminal pre-trial proceedings, suspension of disciplinary proceedings may apply only at the event of criminal prosecution.

In order to address the prevailing practice of the competent bodies to suspend internal proceedings where the disciplinary misconduct investigated constitutes a criminal offence, it was considered appropriate by the Mechanism to limit the time frame of the possibility of using the suspension of disciplinary proceedings. It therefore proposed that a provision should be

made that suspension of disciplinary proceedings shall be exceptionally allowed only after servicing of the summons or the writ of summons, pursuant to CCP in respect of the same acts.

This particular proposal was fully adopted by the new p.d. 111/2019, while the first subparagraph of Article 48(3) of p.d. 120/2008 was replaced by Article 1(3) of p.d. 111/2019. In its current form, the last provision provides that the criminal proceedings shall not suspend disciplinary proceedings, however the bodies responsible for the exercise of disciplinary proceedings and the competent disciplinary bodies may exceptionally order, by a freely revocable decision, the suspension of the disciplinary proceedings for one year if summons or the writ of summons has been served pursuant to the CCP. Disciplinary proceedings may be suspended only pending a criminal court's judgment on a criminal prosecution already initiated, without hindering the progress of disciplinary proceedings pending criminal pre-trial proceedings. The new provision accepts and reflects the substance of the Mechanism's proposal, as to the competence of the bodies which have this particular discretion, which pursuant to the texting of the new provision seems to be extended, since it refers both to those responsible for bringing disciplinary proceedings and to the competent disciplinary bodies. Taking into account the need to avoid contradictory decisions and the provision of the possibility of suspension, the Mechanism considers this provision to be self-evident and hopes that it will not lead to an extension of the duration of the proceedings before the Disciplinary Boards.

7.2.3. Limitation of the duration of the carrying out and issuance of opinion of administrative inquiries on statements of finding

In many of the administrative inquiries the Mechanism has dealt with, duration overhead and informal extension (of the duration of carrying out) has been recorded. In order to carry out administrative inquiries within a shorter period of time and in a comprehensive way and in order to assist with the conductors' work, it proposed that provision shall be made in p.d. 120/2008[131] and in the corresponding provisions on the personnel of the rest of the security forces and detention facilities: a. priority response to requests from the conductors of administrative inquiries, b. for an extension of the time limit to take place, the conductor should indicate and explain a specific reason or reasons which make such an extension necessary, while

131. Disciplinary law of police personnel.

the person deciding shall refer to the specific reasons in his decision, c. the provision of Article 39 para. 6 of 120/2008 should either repealed or amended and the phrase "but without due cause.. misconduct" should be removed.

By virtue of Article 1, para. 2 of p.d. 111/2019 (A' 216), paragraph 6 was added in Article 24 of p.d. 120/2008 on PDE and a period of 2 months has been set for them, as well as the possibility of extending it for one month by reasoned decision and if there are exceptional reasons. In addition, Article 1, para. 6 of p.d. 111/2019 was amended by Article 39, para. 6 of p.d. 120/2008 and the phrase " but without due cause.. misconduct" was removed.

In line with the proposals of the Mechanism, a provision on the time of closure and its extension was added by p.d. 120/2008 as for the PDE, that is corresponding to the provision on the EDE and has to do with the extension of the time of closure and its extension upon exceptional reasons, with the exception that the extension time in the PDE is one month. However, the provision of Article 39 para. 6 of p.d. 120/2008 was neither replaced nor repealed. The indicative texting on the deadlines has been maintained, therefore the competent bodies should endeavour to comply with the deadlines and not by rule overcome them.

7.2.4. Issues relating to legislation on the use of firearms

The Mechanism in its Report for the years 2017-2018 had drafted various proposals on the use of firearms by the personnel of the bodies under its jurisdiction, based inter alia on Law 3169/2003 which regulates the use of firearms by police officers and in accordance with what applies internationally with the use of firearms. The proposals concerned issues on the use of firearms both by police personnel as well as other security forces and external guard personnel.

On the application of Article 1, para. 6 of p.d. 111/2019 in regards to police personnel, the proposal of the Mechanism was adopted, according to which the finding of the EDE, that was carried out on the use of a firearm, should be included in the EDE file, as for the award of the police gallantry award or other moral reward (and therefore to be taken into account for the determination of the act of gallantry).

The new provision added a subparagraph to Article 1 para. 2 of p.d. 144/1991 on the award of a police gallantry award of excellence according

to which the finding of administrative inquiries in accordance with the provisions of p.d. 120/2008 on the use of a firearm is an integral part of an EDE, as for the determination of the satisfaction of the preconditions for awarding police gallantry award of excellence and its conclusion is taken into account at its discretion for the award thereof. The regulatory legislator adopted the Mechanism's proposal and foresaw what it proposed and undoubtedly such an arrangement is moving in the right direction as it ensures that only those who are acting properly will be able to enjoy moral reward.

The above-mentioned provisions of p.d. 111/2019 accepting proposals of the Mechanism reflected in the provisions of p.d. 120/2008 basic principals, which the European Court of Human Rights (ECtHR) has formulated with its case-law. However, it did not accept proposals made in the Report of the Mechanism as means of complying with decisions of the ECtHR at the expense of our country, missing this way an important opportunity towards substantial execution of EChHR rulings. In particular, the Mechanism proposed economic penalties against pensioners in the form of a one-off deduction or a percentage of the pension that could be provided by an amendment-addition of Article 6 para. 3 of p.d. 120/2008, in the case our country is obliged under a ruling by the ECtHR to compensate for violating provisions of the ECHR, due to deficiencies in disciplinary or criminal proceedings which investigated the pensioner's unlawful conduct when in duty.

Furthermore, a proposal of the Mechanism was also not accepted, to amend p.d. 120/2008, in cases of the commission of crimes under Articles 137A, 137 B PC (equivalent disciplinary misconduct of Article 10(1)(c) of p.d. 120/2008), in order to ensure that, where criminal proceedings are brought for these crimes, the measure of furlough should expressly be imposed and if an EDE is carried out (without or before the prosecution) the measure of temporary movement to an Office where the staff under investigation will not perform the tasks as required by Article 137A PC would be imposed, i.e. 'prosecution or interrogation or inquiry of criminal offences or misconduct or the execution of sentences or safeguarding or custody of detainees' (even citizens summoned to the department).

Undoubtedly the initiative of the regulatory legislator and the arrangements of p.d. 120/2008 move in the right direction and are the example of the declared disposition of the Political Leadership of the Ministry of Citizen Protection and the Leadership of the Hellenic Police for cooperation and implementation of the proposals of the Mechanism. For this reason, the proposals which were formulated by the Mechanism as means of compliance

with decisions of the ECtHR are highlighted, in order to be considered upon a future initiative. In the same context for any future legislative initiative, the Mechanism reformulates and recalls due to their importance in ensuring evidence and therefore the very effectiveness of investigating cases of arbitrariness, its two proposals, which were also formulated in the 2017-2018 Report, namely:

A. Installation and operation of video surveillance systems in places where this is allowed in accordance with the applicable legislation, the Penitentiaries, detention centres or cells of the Hellenic Police or the LS-ELACT or the Fire Brigade and mandatory retention of the relevant video material for a period of three months from the recording date.

B. Protection of employees- witnesses of incidents of arbitrariness conducted by their colleagues.[132]

Finally, the Mechanism, taking into account the findings raised by the thematic categories of cases, in particular infringements against personal freedom (and in particular those restricted and led to the department) and infringements against physical integrity, concludes that detainees (i.e. persons whose freedom of movement was restricted from the time of their bringing before a Greek Police Service or other pre-trial authority until the serving of custodial sentence after a conviction) are subject to violations as such with high frequency.

The case-law[133] also recognises that the stage of transfer or restriction to the department, prior to the preparation of an arrest report, poses a high risk for the expression of extreme conduct (such as torture) by officials being closer in terms of time to the alleged unlawful behaviour of persons deprived of their personal freedom because they are physically under their power.

Failure to sue for personal injury constitutes an argument for the filing of cases, and despite the provision of Article 23 of p.d. 120/2008 on the investigation of complaints and the right of petition, cases, for which relevant administrative inquiries have not been initiated until subsequent developments, are identified.

However, the very position of the person restricted to his freedom is vulnerable and often prevents persons from making complaints about the in-

132. https://www.synigoros.gr/resources/docs/emhdipa_2017_2018_gr.pdf, pp. 71-72.
133. Thessaloniki Court of Appeal 947/2018, Penal Justice 2019, p. 869.

sults they have suffered, but according to the case-law[134] of the ECtHR the protection of the physical integrity of people cannot be restricted because of the requirements of investigation and the difficulties inherent in the fight against crime. Having regard to No 6/2008, 4/2002 and 1/2020 circulars of the Prosecutor of the Supreme Civil Court and the provisions of Article 137A, para. 3 of PC and 308 et seq. of the PC as in force (N.4619/2019), the Mechanism proposes the issuance of circulars both to the competent Prosecutors for any criminal investigation and to the disciplinary bodies responsible for disciplinary investigation, of their own motion, within the framework of the provisions in force, of incidents of mistreatment of persons who have been charged, arrested or serving a sentence and bear obvious signs that they have suffered infringements of their physical integrity.

134. Decision on the case TOMASI vs France 07.08/1992 (address number 12850/87), part 115.

Annex

Annex

Article 188 of Law 4662/2020 (A' 27/7.2.2020)

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

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

"Article 1

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

a. torture and other violations of human dignity under Article 137A of the Penal Code,

b. intentional illegal offenses against life or physical integrity or health or personal or sexual freedom,

c. illegal use of firearms and

d. Illegal conduct, for which there is evidence that it was carried out with racist motives or which involves other forms of discrimination on the grounds of race, skin color, national or ethnic origin, genetic features, religious or other beliefs, disability or chronic illness, age, family or social status, sexual orientation, gender identity or characteristics.

2 Complaints must come from identifiable persons and must be written and submitted to the Ombudsman, in person or by proxy. The name and other identity details of the complainant may not be disclosed at the stage of the investigation, if requested by the complainant in writing. If, at the discretion of the Ombudsman, the investigation is not possible without the name being announced, the person concerned shall be notified that his complaint will be dismissed if he does not consent in writing to the announcement of his name. If the complainant has no knowledge of the Greek language, he may appear with a translator. If the complainant is unable to write, the complaint is made orally and recorded by an employee of the Ombudsman and a report is drawn, in which special mention is made of the complainant's inability to write. The report is signed by the complainant and the employee of the Ombudsman who wrote it. When the complaint is anonymous, it is dismissed through an act of the Ombudsman, but any evidence that provides a basis for investigation can be used in the context of an ex-officio investigation. The Ombudsman may intervene ex officio, after receiving information with specific details about incidents described in paragraph 1 and especially those that come from publications or broadcasts of the media or after the case has been referred by the competent Minister or Secretary-General.

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

4 In any case of investigation of a complaint or incident by the Ombudsman, through its own investigation, referral of the case to the competent service or monitoring of the administrative inquiry, the competent disciplinary authorities suspend the issuance of their decision until a report is issued by the Ombudsman. Any administrative measures provided by the disciplinary law of each service and taken against the disciplinarily in-

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

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

6 Within the deadlines of paragraph 3 of this Article, the Ombudsman, reserving his power of investigation and issuance of a relevant report, announces its decision for the case to be re-opened, along with all the details of the file, to the competent service which is bound to the above decision and orders a new investigation, in accordance with the judgment of the Eu-

ropean Court of Human Rights and with regard to the legal characterization of the investigated act. In the context of re-investigation of the disciplinary case, it is possible to prosecute or to supplement the prosecution and to impose the appropriate disciplinary penalty, regardless of the initial hearing of the case, provided that no employee is prosecuted for the second time and for the same offense, unless there is evidence of new or newly discovered facts or if there has been a fundamental defect in the previous proceedings.. For the calculation of the limitation period provided by the disciplinary rules of the security forces and the personnel of detention facilities, the time interval between the judgment of the competent disciplinary authority, under Articles 38 and 39 of Presidential Decree 120/2008 (A' 18), Article 5 of Presidential Decree 187/2004 (A' 187), Article 25 par. 9 of Legislative Decree 343/1969 (A' 238), Article 18 paragraphs 9 and 10 of Legislative Decree 935/1971 (A' 149) and Article 122 of the Code of Civil, Servants and Employees of Public Law Legal Entities, and the reception of the decision of the European Court of Human Rights by the Ombudsman, is not measured. for the rest, the ordinary disciplinary procedure of each Service, where the investigated personnel belongs, is followed. If the Ombudsman does not deem it necessary to re-examine the case, it shall notify the Personnel Directorate of each competent Service in order to dismiss the case.

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

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

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

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

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

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

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

Abbreviations

C	Constitution
CdE	*Conseil d' Etat*
CPD	Code of Criminal Procedure
CPT	Council of Europe Committee for the Prevention of Torture
DEE	Forensics Police Department
DIAS	Motorcycle Police
DIMET	Public Order Directorate
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EDE	Administrative Inquiry Under Oath
ELAS	Hellenic Police
EMIDIPA	National Mechanism for the Investigation of Arbitrary Incidents
F	File
GADA	Attica Police Headquarters
GADTH	Thessaloniki Police Headquarters
GEPAD	Regional Police Headquarters
GO	Greek Ombudsman
L	Law
LS-ELAKT	Hellenic Coast Guard
MME	Media
NGO	Non-Governmental Organization
NSK	Legal Council of State
PC	Penal Code
PD	Police Department
PDE	Preliminary Administrative Inquiry
PROKEKA	Pre-removal Detention Centre for Aliens
RIC	Reception and Identification Center
SC	Supreme Court
TA	Security Department
VAS	Book of Offenses and Incidents