

Greece: Barriers to justice, effectiveness of investigations and work of lawyers

Joint Civil Society Contribution to the UN Special Rapporteur on the independence of judges and lawyers
January 2024

1. The present contribution from independent organisations Vouliwatch, Greek Council for Refugees (GCR), Refugee Support Aegean (RSA), HIAS Greece, Hellenic League for Human Rights (HLHR) and Reporters United aims to inform the Special Rapporteur's work on the independence of judicial systems in the face of contemporary challenges to democracy ahead of her report to the 56th session of the Human Rights Council. The state of the justice system and rule of law in Greece is a core part of our work and the subject matter of regular engagement with international and regional institutions, namely the annual Rule of Law Report prepared by the European Commission.
2. Our contribution focuses on Greece and covers persisting and emerging challenges relating to the independence of the justice system, with particular focus on prosecution services and lawyers. Our findings have recently been shared with the European Commission ahead of its 2024 Rule of Law Report.¹

Judges

3. Several recent issues raise concerns about the perception of independence of the Greek judiciary, including:
 - 3.1. The allegations, levelled by Supreme Court Vice-President Christos Tzanerikos, of attempted government interference in the justice system. After his resignation, he also claimed to have been approached by government officials and to have been requested to assist in the blocking of a specific political party from national elections in exchange for potential career advancement in the future.²
 - 3.2. The actions taken by the Greek justice system regarding the scandal of surveillance and illegal use of Predator spyware against high-ranking officials, journalists and other targets, consisting of: (i) Opinion 1/2023 of the Supreme Court Prosecutor deeming that ADAE had no competence to check surveillance records, in contravention of the supervisory powers bestowed upon the authority by the Constitution;³ (ii) the removal of the criminal case file from the Athens Prosecutor's office in October 2023;⁴ (iii) the summons of ADAE members for questioning.⁵

¹ Vouliwatch et al., Greece in institutional decline: Civil society tracks persisting rule of law backsliding, 24 January 2024, [URL](#).

² Govwatch, 'Allegations of an attempt to interfere with the justice system', 12 April 2023, [URL](#).

³ Govwatch, '15 constitutional law professors denounce Supreme Court Prosecutor's opinion that ADAE has no competence to check surveillance records', 15 January 2023, [URL](#).

⁴ ReportersUnited, 'Πώς ο Άρειος Πάγος ματαιώσε την αποκάλυψη της σχέσης κυβέρνησης – Predator', 24 October 2023, [URL](#).

⁵ RSF, 'Predatorgate scandal in Greece: RSF denounces the political sabotage of the investigation', 2 November 2023, [URL](#); HLHR, 'Οι Ανεξάρτητες Αρχές υπό διωγμό', 27 October 2023, [URL](#).

- 3.3. The broader issue of placement of judicial officials in public bodies (e.g. independent authorities) immediately after retirement from the judiciary. It has been argued that such a practice may constitute indirect influence on judicial work that may also affect the perception of independence and impartiality of the judiciary.⁶

Prosecutors

4. Greece continues to fall far short of the independence, impartiality and effectiveness standards required by Articles 6 and 7 ICCPR – and corollary provisions of the European Convention on Human Rights and Charter of Fundamental Rights of the European Union – as regards investigations into the alleged human rights violations by law enforcement bodies. Criminal proceedings on cases involving the Hellenic Police and Hellenic Coast Guard are marred by systemic deficiencies yet to be meaningfully addressed, despite numerous European Court of Human Rights (ECtHR) judgments and an increasing number of pending cases against the State. Recent condemnations against Greece for ineffective investigations include: *Safi v. Greece* App No 5148/15 (2022) on the sinking of a boat carrying refugees off the coast of Farmakonisi island; *Torosian v. Greece* App No 48195/17 (2022) on ill-treatment in a penitentiary institution; *B.Y. v. Greece* App No 60990/14 (2023) on unlawful removal of a refugee to his country of origin; and *Alkhatib v. Greece* App No 3566/16 (2024) on lethal use of firearms against a boat carrying refugees off the coast of Pserimos island.
5. The systemic concerns highlighted above have resurfaced following the shipwreck occurred off the coast of Pylos on 14 June 2023 when a fishing trawler carrying an estimated 750 passengers sank in the Greek search and rescue zone, leaving only 104 survivors.⁷ Several regional institutions have called upon Greece to deliver a credible investigation into the incident.⁸ The Greek authorities have launched two discrete investigations: one by the Public Prosecutor of Kalamata resulting in prosecution of nine persons for smuggling, illegal entry, criminal organisation, causing of a shipwreck, negligent manslaughter and endangerment, and one by the Naval Court Prosecutor concerning potential responsibility of the Hellenic Coast Guard. The latter is at the stage of preliminary investigation (*προκαταρκτική εξέταση*) at the time of writing.

Lack of independence of investigating officers

6. According to the Criminal Procedure Code, investigations into potential criminal conduct by law enforcement bodies may be carried out by the very same state bodies (Hellenic Police, Hellenic Coast Guard) in their capacity as “general investigating officers” (*γενικοί ανακριτικοί υπάλληλοι*)

⁶ Dikastiko, ‘Χαράλαμπος Σεβαστίδης: Υπευθυνότητα και υποχρεώσεις των δικαστικών λειτουργιών μετά την αφυπηρέτησή τους’, 25 April 2023, [URL](#); Bar Association of Athens, ‘Συνάντηση του Προέδρου της Ολομέλειας με την Επιτροπή Πολιτικών Ελευθεριών, Δικαιοσύνης και Εσωτερικών Υποθέσεων (LIBE) του Ευρωπαϊκού Κοινοβουλίου’, 8 March 2023, [URL](#).

⁷ RSA, ‘Pylos Shipwreck: Timeline and archive of a tragedy that could have been avoided’, 27 July 2023, [URL](#); GCR et al., ‘40 survivors of the Pylos shipwreck file a criminal complaint before the Naval Court of Piraeus’, 14 September 2023, [URL](#).

⁸ Council of Europe Commissioner for Human Rights, ‘Pylos shipwreck: the Greek authorities must ensure that effective investigations are conducted’, 28 July 2023, [URL](#).

competent for the conduct of the preliminary investigation and pre-interrogation (προανάκριση) following a Public Prosecutor order or *ex officio*.⁹

7. Investigations in Greece follow a wider pattern of coast guards performing preliminary interrogations on incidents involving the Coast Guard. This is highlighted in pending cases before the ECtHR including: *F.M. v. Greece* App No 17622/21 regarding the shipwreck of a boat off the coast of Agathonisi island; *Almukhlas v. Greece* App No 22776/18 on the lethal shooting of a minor passenger by Coast Guard fire inside a boat near the coast of Symi island.¹⁰ Similar concerns arose in the Kalamata Prosecutor case opened following the aforementioned Pylos shipwreck, where the preliminary interrogation was carried out by officers of the Coast Guard of Kalamata, even though the incident involves potential responsibility of the Coast Guard.
8. Similarly, in *Muhammad v. Greece* App No 34331/22 relating to the criminal investigation into the death of Muhammad Gulzar, a Pakistani national who was allegedly shot by the Greek authorities at the Turkish-Greek border on 4 March 2020, the police officers who conducted the investigations belonged to the same Police Directorate with those allegedly involved in the incident. Additionally, one of them was of an inferior rank to the police officer from whom she took a testimony.
9. Following the ECtHR judgment in *Torosian v. Greece*, the Supreme Court Prosecutor issued Circular 1/2023 urging prosecutors to ensure that, in the context of complaints against police and correctional officers relating to ill-treatment in the sense of Article 7 ICCPR, preliminary investigations are conducted by First Instance Court Prosecutors and not by police officers. There are no similar prosecutorial instructions in place with regards to investigations of complaints against officers of the Hellenic Coast Guard, including *ex officio* preliminary examinations launched into incidents that may involve responsibility of the Coast Guard for breaches of Articles 6 and 7 ICCPR e.g. push backs, deathly shipwrecks or other casualties at sea.¹¹ We note that Circular 4639/2023 issued by the Naval Court Prosecutor and transmitted to the Presidents and Prosecutors of all military courts and to the Hellenic Coast Guard headquarters following the *Safi v. Greece* judgment does not address the aforementioned systemic deficiencies.
10. Furthermore, the Prosecutor may archive cases without preliminary investigation where an administrative inquiry (ένορκη διοικητική εξέταση) has been conducted or a National Transparency Authority (Εθνική Αρχή Διαφάνειας, NTA) report has been issued.¹² However, administrative inquiries are often also conducted by police officers of the very same Directorate under investigation.

Deficient evidence collection

11. Witnesses called in the context of the Kalamata Prosecutor case on the aforementioned Pylos shipwreck have reported omissions and tampering of their testimonies on the incident, including

⁹ Articles 31(1)(b) and 245 Criminal Procedure Code, L 4620/2019, Gov. Gazette A' 96/11.06.2019.

¹⁰ RSA & Stiftung PRO ASYL, *Beyond Farmakonisi: The responsibility of the Greek Coast Guard for human rights violations at sea*, August 2023, 12-13, [URL](#).

¹¹ GCR & ECRE, *Submission to the Committee of Ministers in Safi v. Greece*, November 2023, 16, [URL](#).

¹² Article 43(4) Criminal Procedure Code.

identical records of different witness statements.¹³ Similar deficiencies have been documented in the recent *Alkhatib v. Greece* judgment and in pending cases such as *F.M.* and *Almukhlas* mentioned above.¹⁴ In addition, over twenty mobile phones of survivors of the Pylos shipwreck have been confiscated by the Hellenic Coast Guard¹⁵ without a formal procedure, documentation of information on how they can be retrieved.

12. Contrary to the immediate mediatisation of the Kalamata Prosecutor investigation against the alleged smugglers, the Naval Court Prosecutor investigation into the shipwreck was initiated on 19 June 2023 but was only made public by the European Commission in a 6 July 2023 hearing at the European Parliament. Yet, during the first three months of the investigation, the Naval Court Prosecutor had called none of the survivors of the shipwreck to testify on the circumstances of the incident. This was only triggered after forty of them lodged a criminal complaint to said Prosecutor.¹⁶ In a similar vein, the Prosecutor ordered the confiscation of the mobile phones of the coast guards on board the Coast Guard vessel in question no earlier than three months after the shipwreck, after the survivors' criminal complaint.¹⁷
13. Despite the launch of criminal proceedings on the Pylos shipwreck, the Hellenic Coast Guard has refused to carry out a disciplinary investigation into its operations relating to the shipwreck. This led the Greek Ombudsman to launch its own examination of the incident in its capacity as National Mechanism for Investigation of Arbitrariness Incidents.¹⁸
14. Additional procedural irregularities are highlighted in a December 2023 application to the ECtHR lodged by GCR regarding a push back occurred upon entry of the applicants into a state-run reception facility on Lesbos island with the involvement and coordination of Hellenic Police officers. None of the Coast Guard or Hellenic Police officers on duty on the dates and hours of the alleged incident were examined in the context of the preliminary examination, following which the case was shelved in the archive of unknown perpetrators.
15. In an incident documented by Doctors without Borders (MSF) in October 2022,¹⁹ involving the handcuffing and ill-treatment of newly arrived asylum seekers on Lesbos by masked men posing as doctors, the case files were shelved on grounds of unknown perpetrators and of insufficient evidence, even though a police radio had been found on site and had been returned to the Greek authorities.²⁰

¹³ GCR & ECRE, *Submission to the Committee of Ministers in Safi v. Greece*, November 2023, 22-23.

¹⁴ RSA & Stiftung PRO ASYL, *Beyond Farmakonisi: The responsibility of the Greek Coast Guard for human rights violations at sea*, August 2023, 13-14.

¹⁵ Ministry of Maritime Affairs and Island Policy, Reply to parliamentary question, 1500.1/59296/2023/110, 22 August 2023, [URL](#).

¹⁶ GCR et al., '40 survivors of the Pylos shipwreck file a criminal complaint before the Naval Court of Piraeus', 14 September 2023, [URL](#).

¹⁷ GCR & ECRE, *Submission to the Committee of Ministers in Safi v. Greece*, November 2023, 25.

¹⁸ Ombudsman, 'Ο Συνήγορος του Πολίτη ερευνά το ναυάγιο της Πύλου', 9 November 2023, [URL](#).

¹⁹ MSF, 'People found handcuffed and injured on the Greek island of Lesbos', 25 October 2022, [URL](#).

²⁰ Hellenic Parliament, Reply to parliamentary question, 017/4/26237-6, 26 November 2022, [URL](#).

16. In addition, cases such as *Muhammad* illustrate that the Greek authorities have refused judicial cooperation with Türkiye with a view to establishing the circumstances of the case and collecting the necessary evidence for its adjudication.

Lawyers

17. Lawyers in Greece have faced pressure, intimidation and targeting for performing their duties, particularly in the context of support to and representation of refugees and migrants. In her 2023 report on Greece, the UN Special Rapporteur on human rights defenders issued a wide range of recommendations to the Greek government, including to “Ensure no retaliation, including stigmatizing statements by public officials and threats of criminal proceedings, including investigations, against human rights defenders on the basis of their engagement with regional human rights mechanisms, in particular the European Court of Human Rights”.²¹

18. Targeting of lawyers includes arbitrary criminalisation. On 13 July 2023, the Bar Association of Thessaloniki adopted a resolution “expressing its indignation against the legally baseless arrest of a young colleague during the exercise of his functions and in fact for reasons directly related thereto. According to the information received by the Bar Association, the manifestly unsubstantiated charges against the colleague are solely based on the fact that he went to obtain authorisations from clients in order to submit an asylum application.”²²

19. The Bar Association of Athens issued an opinion in September 2023, clarifying that lawyers providing legal advice and assistance to persons arriving in Greece and wishing to apply for international protection – as well as interpreters used to enable communication – can in no way be construed as facilitating irregular entry or stay, in line with Court of Justice of the European Union (CJEU) case law. The opinion also highlighted that communication with such parties is covered by client-attorney privilege under the *lex specialis* provisions of the Lawyers Code.²³

20. Additionally, the Greek government has placed impermissible requirements on lawyers for access to refugee camps, namely a request for access to be approved by the camp manager. Lawyers have been denied access to such facilities on that basis.²⁴ The policy contravenes the legal framework governing the legal profession and poses unlawful obstacles to the exercise thereof.²⁵ The Ministry of Migration and Asylum, however, confirmed in response to the same question that authorities require lawyers to produce certified signed authorisations of their clients to be allowed entry into reception facilities for refugees and migrants.²⁶ A December 2022 opinion of the Bar Association of Athens clarifies that lawyers enjoy free access to facilities accommodating

²¹ UN Special Rapporteur on human rights defenders, *Visit to Greece*, A/HRC/52/29/Add.1, 2 March 2023, [URL](#).

²² Bar Association of Thessaloniki, ‘Ψήφισμα για τη σύλληψη συναδέλφου’, 13 July 2023, [URL](#); Govwatch, ‘Lawyer arrested during the performance of his duties’, 26 July 2023, [URL](#).

²³ L 4194/2023, Gov. Gazette A’ 208/27.09.2013. See Bar Association of Athens, Opinion No 143, 11 September 2023, [URL](#).

²⁴ See also AFP, ‘Migrant groups decry ‘witch-hunt’ as Greece tightens grip’, 20 November 2022, [URL](#).

²⁵ Articles 34 and 36 Lawyers’ Code.

²⁶ Ministry of Migration and Asylum, Reply to parliamentary question, 625975/2022, 20 October 2022, [URL](#).

refugees and migrants without prior notification of camp management.²⁷ Not all camp management authorities have aligned their practice to date, however.

²⁷ Bar Association of Athens, Opinion No 185, 1 December 2022, 2.