



SUBMISSION TO THE COMMITTEE OF MINISTERS ON THE EXECUTION OF *ZONTUL V GREECE*

25 October 2018

REDRESS is an international human rights organisation that represents victims of torture in obtaining justice and reparations. It brings legal cases on behalf of individual survivors and applies its expertise in torture, reparations, and the rights of victims to conduct research and advocacy to identify necessary changes in law, policy and practice.

This document is for consideration at the 1331st meeting of the Ministers' Deputies of the Committee of Ministers (CoM) from 4-6 December 2018.

The submission addresses individual measures arising from the case of *Zontul v Greece*¹ and general measures arising from the CoM's examination of the *Makaratzis* group of cases, of which *Zontul* is a part.

Summary of submission

In 2001 Mr Necati Zontul was tortured by officers of the Greek Coastguard while detained in a camp for asylum seekers. Following a flawed investigation and prosecution of the Coastguard officers responsible for Mr Zontul's treatment by the Greek authorities, REDRESS assisted Mr Zontul in bringing a case against Greece at the European Court of Human Rights (ECtHR).

The ECtHR found in favour of Mr Zontul in 2012, concluding that Greece had breached Article 3 of the European Convention on Human Rights (European Convention) as a result of Mr Zontul's torture and denial of reparations, as well as Greece's failure to investigate and sanction the perpetrators appropriately.

REDRESS recommends, in respect of the individual measures arising from the ECtHR's judgment in Mr Zontul's case, that the CoM take the following steps.

- Ask the Greek Government to explain why it did not inform Mr Zontul about the closure of the reopened disciplinary investigation over six months ago.
- Recommend that Greece provide a full explanation to Mr Zontul about how the reopened disciplinary investigation was conducted and what conclusions it reached, including a copy of the investigation report.
- Recommend that Greece bring criminal proceedings against the perpetrators for the crime of torture.

REDRESS further recommends, in respect of the general measures arising from the CoM's supervision of the *Makaratzis* group of cases, that the CoM should take the following steps.

- Regarding the lack of independence in the investigation of torture by public officials in Greece:

¹ ECtHR, *Zontul v Greece* (application no. 12294/07), Judgment, 17 January 2012.

- Recommend that the Greek Government amend the policy of the Greek Ombudsman, to require that investigations for which it has responsibility as Mechanism for the Investigation of Arbitrary Behaviour have hierarchical, institutional and practical independence from those responsible for the alleged crimes, and are not carried out by the authority that is itself the subject of the accusations.
 - Offer the technical assistance of the CoE to the Greek Government in developing the capacity of the Greek Ombudsman to conduct independent and effective investigations into alleged torture.
- Regarding the incompatibility of the Greek law on torture with international law:
- Ask the Greek Government whether the Law-Making Committee has proposed any amendments to the Greek Criminal Code to make the Greek definition of torture compatible with international law, and if so, what those amendments are.
 - Reiterate to Greece the importance of amending Greek law on torture to make it compatible with the Article 3 of the European Convention and with Article 1 of the UN Convention Against Torture. This should include removing the requirement that torture be “planned” and removing the limitation period for the crime of torture.
 - Offer the technical assistance of the CoE to the Greek Government in amending the Greek law on torture.
- Regarding the insufficiently punitive sanctions for torture and ill-treatment under Greek law:
- Ask the Greek Government whether the Law-Making Committee has proposed any amendments to the Greek law governing sanctions for torture and ill-treatment, and if so, what those amendments are.
 - Reiterate to Greece the importance of ensuring that sanctions for torture and ill-treatment are sufficiently punitive (i) to be proportionate to the crime committed and (ii) to have the required deterrent effect. This requires custodial sentences, not simply fines, to be imposed in cases of torture.

Structure of submission

Part A of this submission relates to the individual measures necessary to implement the findings of the ECtHR in its judgment in *Zontul v Greece*. REDRESS submits Part A in its capacity as legal representative of the injured party, Necati Zontul, under Rule 9(1).

Part B relates to certain of the general measures that have been examined by the CoM in its supervision of the *Makaratzis* group of cases to date, and which are necessary to implement the findings of the ECtHR in the case of *Zontul* among others. REDRESS submits Part B in its capacity as a non-governmental organisation, under Rule 9(2).

Part A: Individual measures

Findings of the ECtHR

The ECtHR's findings in its judgment in *Zontul v Greece*, issued on 17 January 2012, were that Greece had breached Article 3 of the European Convention in several respects.

- Mr Zontul's treatment had unquestionably amounted to an act of torture (paras 87-93).
- The provision of the Greek Criminal Code that defined torture (Section 137A § 2) was inconsistent with Article 3 of the European Convention in that the Greek Criminal Code wrongly required that torture must be "planned" (paras 87-93).
- The investigation into Mr Zontul's treatment had not been sufficiently thorough or effective (paras 99-101).
- The severity of the sanctions imposed on the perpetrators did not have the required deterrent effect and failed adequately to remedy the treatment Mr Zontul had suffered (paras 105-109).
- Greece failed in its duty to notify Mr Zontul about the criminal proceedings against the perpetrators in time for him to participate in the proceedings and exercise his civil right to compensation (paras 110-113).

The ECtHR ordered Greece to pay Mr Zontul EUR 50,000 in respect of non-pecuniary damage and EUR 3,500 in respect of costs and expenses. Greece subsequently paid those amounts.

Reopened disciplinary investigation into the torture of Mr Zontul

Since the ECtHR's decision in *Zontul*, the CoM has supervised as an individual measure the possibility of Greece reopening the original disciplinary investigation into Mr Zontul's torture.² The CoM noted at its 1302nd meeting on 7 December 2017 that the Greek Government had in 2017 reopened the disciplinary investigation. The CoM requested that Greece provide it with further information on developments and the outcome of the procedure.³

² Council of Europe, *Annotated Order of Business and Decision Adopted at the 1157th Meeting of the Council of Europe*, 10 December 2012, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805c9669.

³ Council of Europe, *Decision of 1302nd Meeting of the Council of Europe Committee of Ministers*, 7 December 2017, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168076d31b.

The reopening of the disciplinary investigation was ordered by the Greek Ombudsman on 11 August 2017, to be carried out by the Greek Coastguard. In December 2017 the Greek Government contacted REDRESS, seeking to obtain information from Mr Zontul for the reopened disciplinary investigation. REDRESS, instructed by Mr Zontul, corresponded with the Greek Coastguard and subsequently the Greek Ombudsman, to obtain more information about the reopened disciplinary investigation in order to enable Mr Zontul to decide, given the concerns as to the way the investigation might be conducted, whether to provide information to it.

Mr Zontul and REDRESS welcomed the Greek Government reopening the disciplinary investigation into Mr Zontul's torture. However, there were significant issues with the independence of the reopened disciplinary investigation. The CoM will be aware that the ECtHR has specified in numerous cases that investigations of torture and ill-treatment must have hierarchical, institutional and practical independence. See, eg, *Bati and Others v Turkey*.⁴ In the case of *Najafli v Azerbaijan* the ECtHR stated as follows:

"The Court has repeatedly stressed that the procedural obligation under Articles 2 and 3 requires an investigation to be independent and impartial, both in law and in practice. ... What is important is that the investigation of alleged misconduct potentially engaging the responsibility of a public authority and its officers was carried out by those agents' colleagues, employed by the same public authority. In the Court's view, in such circumstances an investigation by the police force of an allegation of misconduct by its own officers could not be independent in the present case."⁵

The Guidelines on European Standards for the Effective Investigation of Ill-Treatment elaborate on this requirement as follows: "4.1.1 Officials involved in conducting investigations and all decision makers cannot be part of the same public authority as the officials who are the subject of the investigation and must be otherwise independent from those implicated in the facts being investigated."⁶

In Mr Zontul's case an investigation by the Greek Coastguard into torture committed by officers of the Greek Coastguard was not sufficiently independent to meet the requirements of the European Convention or international law. Not only was the reopened disciplinary investigation being carried out by the Greek Coastguard itself, but it appears that it was being carried out by officers from the same regional administration as those responsible for Mr Zontul's torture and the original failed investigation. The email signature of Captain Alexandrakis, the Coastguard officer that contacted REDRESS about the reopened disciplinary investigation, states that he is part of the 7th Regional Administration and gives his contact address as Heraklion, Crete. Mr Zontul's original torture took place in Crete, and therefore the Coastguard officers responsible were presumably also part of the 7th Regional Administration. Similarly, the original failed disciplinary investigation appears to have been carried out by the Coastguard Port Captain of Heraklion.⁷ Such close connections would remove any possibility of the reopened disciplinary investigation being independent from the individuals and events it was supposed to be investigating.

That the Greek Ombudsman had oversight of the reopened disciplinary investigation was not a sufficient safeguard when those carrying out the investigation, the Greek Coastguard, lacked the necessary independence. The ECtHR stated in *Kelly and Others v the United Kingdom* that:

⁴ ECtHR, *Bati and Others v Turkey*, Judgment of 3 June 2004, applications nos. 33097/96 and 57834/00, para 135.

⁵ ECtHR, *Najafli v Azerbaijan*, Judgment of 2 October 2012, application no. 2594/07, para 51.

⁶ See also UN Office of the High Commissioner for Human Rights (OHCHR), *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Istanbul Protocol")*, 2004, paras 74-75.

⁷ ECtHR, *Zontul v Greece*, para 16.

“Even though it also appears that, as required by law, this investigation was supervised by the ICPC, an independent police monitoring authority, this cannot provide a sufficient safeguard where the investigation itself has been for all practical purposes conducted by police officers connected, albeit indirectly, with the operation under investigation.”⁸

REDRESS raised the above concerns in its correspondence with the Greek Coastguard and the Greek Ombudsman, and requested further information to alleviate Mr Zontul’s and REDRESS’s concerns. Specifically, REDRESS requested details of: (i) the anticipated timing, scope of and steps taken and planned in the reopened disciplinary investigation; (ii) any further information required from Mr Zontul by the reopened disciplinary investigation; (iii) the power of the reopened disciplinary investigation to impose new sanctions on the responsible Coastguard officers; and (iv) the possibility of the criminal proceedings against the responsible Coastguard officers being reopened. REDRESS raised these issues in letters of 21 March 2018 and 21 May 2018 to the Greek Ombudsman. The Greek Ombudsman has not responded to the second of those letters, and REDRESS and Mr Zontul have received no further communications from the Greek authorities.

Mr Zontul did not therefore participate in the investigation due to his concerns about the impartiality and consequently the effectiveness of the investigation.⁹ Requiring Mr Zontul to participate in the reopened investigation would have risked re-traumatizing him and compounding the psychological harm that he continues to suffer as a result of his torture.¹⁰ Mr Zontul and REDRESS consider that it would have been inappropriate to subject Mr Zontul to this risk without good reason, in particular without further information about the reopened disciplinary investigation and how the concerns about its independence are to be addressed.

REDRESS and Mr Zontul recently learned that the Greek authorities in fact closed the reopened disciplinary investigation on 13 April 2018. REDRESS and Mr Zontul are only aware of the closure of the reopened disciplinary investigation because Greece referred to it in its 4 October 2018 submission to the CoM.¹¹ In failing to inform Mr Zontul or REDRESS about the closure of the reopened disciplinary investigation six months ago, Greece has repeated its failings in the original disciplinary investigation and criminal prosecution of Mr Zontul’s case. The ECtHR found that Greece failed in its duty to involve Mr Zontul as a victim in the proceedings (paras 110-112). Greece has done so once again by refusing to inform Mr Zontul or REDRESS about the closure of the reopened disciplinary investigation.

It appears from Greece’s 4 October 2018 submission to the CoM that the reopened disciplinary investigation concluded that no new disciplinary charges could be brought against the perpetrators because the offences were subject to limitation periods. As REDRESS and Mr Zontul have received no other information from Greece about the conclusion of the reopened disciplinary investigation, they are currently unable to comment further on this issue. It is crucial that Greece provide a full explanation to Mr Zontul about how the reopened disciplinary investigation was conducted and what conclusions it reached, including a copy of the investigation report. This is information to which Mr Zontul is entitled as the victim in question, and which is necessary for Mr Zontul to determine how he wishes to proceed with this matter.

⁸ ECtHR, *Kelly and Others v United Kingdom*, Judgment of 4 May 2001, para 114.

⁹ REDRESS did, in its correspondence with the Greek Ombudsman, direct the reopened disciplinary investigation to Mr Zontul’s witness testimony in the ECtHR case, which Greece will have access to, having been a party to those proceedings.

¹⁰ OHCHR, *Istanbul Protocol*, 2004, para 149.

¹¹ Submission of Greek Government to Committee of Ministers, 4 October 2018, [http://hudoc.exec.coe.int/eng/?i=DH-DD\(2018\)971F](http://hudoc.exec.coe.int/eng/?i=DH-DD(2018)971F), pp 3-4.

In any event, reopened disciplinary proceedings against the perpetrators of Mr Zontul's torture would not alone have been sufficient as an individual measure to rectify the ECtHR's finding that Greece breached the European Convention in failing to convict the perpetrators of torture and in failing to impose sufficiently punitive sanctions on them. This can only be fulfilled by further criminal proceedings against the perpetrators for torture and the imposition of sufficiently punitive sanctions. If Greek law does not currently permit such proceedings and sanctioning then that law should be changed, as outlined below in relation to general measures.

The CoM should:

- Ask the Greek Government to explain why it did not inform Mr Zontul about the closure of the reopened disciplinary investigation over six months ago.
- Recommend that Greece provide a full explanation to Mr Zontul about how the reopened disciplinary investigation was conducted and what conclusions it reached, including a copy of the investigation report.
- Recommend that Greece bring criminal proceedings against the perpetrators for the crime of torture.

Part B – General measures

The remainder of this submission addresses certain of the general measures that have been examined by the CoM in its supervision of the *Makaratzis* group of cases to date, and which are necessary to implement the findings of the ECtHR in the case of *Zontul* among others. The general measures are required to address the following three systemic issues:

- the lack of independence in the investigation of torture by public officials in Greece;
- the incompatibility of Greek law on torture with international law; and
- the insufficiently punitive sanctions for torture and ill-treatment under Greek law.

Measures of non-repetition such as the above are a key element of reparations.¹² As a result, the general measures arising out of the *Makaratzis* group are also of personal interest to Mr Zontul.

Lack of independence in the investigation of torture by public officials in Greece

The concerns outlined above in relation to the *Zontul* case exemplify a more general problem with the current mechanism for investigating torture by public officials in Greece.

The CoM noted at its 1302nd meeting on 7 December 2017 that the Greek Ombudsman had been appointed in 2017 as the “National Mechanism for the Investigation of Incidents of Abuse by Law Enforcement Agents and by Employees of State Penitentiary Establishments” (the Mechanism for the Investigation of Arbitrary Behaviour).¹³ This gave the Greek Ombudsman the power to supervise, among other things, investigations into allegations of torture and ill-treatment by public officials.

¹² *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, Article 23, <https://www.ohchr.org/en/professionalinterest/pages/remedyandrepairation.aspx>.

¹³ Council of Europe, Notes on the Agenda of the 1302nd Meeting of the Council of Europe Committee of Ministers, 7 December 2017, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000168076387a.

The CoM in its decisions at the meeting asked Greece to provide further information about the results of the action undertaken by the Ombudsman in this capacity.¹⁴

The Greek Government should be commended for the appointment of the Ombudsman as the Mechanism for the Investigation of Arbitrary Behaviour. It is a positive step towards ensuring accountability for public officials responsible for torture in Greece, and for ensuring access to justice for the victims of that torture.

However, as demonstrated in the *Zontul* case, the policy whereby the Greek Ombudsman may, rather than investigating the allegation itself, forward the case to be investigated by the authority that has been alleged to have carried out the torture, creates significant risk to the independence of the investigation.

REDRESS notes Greece's assertion in its 4 October 2018 submission to the CoM that "the Ombudsman does not limit himself to supervising the conduct of the disciplinary procedure, but intervenes in the procedure in a substantial way".¹⁵ This, however, is not enough. The caselaw of the ECtHR, as set out above at pages 4-5, is very clear that investigations have to have hierarchical, institutional and practical independence from those they are investigating. Supervision, no matter how substantial, is not sufficient. This is because any initial investigation that is not independent is likely to contaminate witnesses and other evidence in such a way that would render a subsequent independent investigation impossible.

It is therefore necessary for the Greek Government to change the policy of the Greek Ombudsman to ensure that investigations for which it has responsibility as Mechanism for the Investigation of Arbitrary Behaviour have hierarchical, institutional and practical independence from those responsible for the alleged crimes. In practice this is likely to mean that the Greek Ombudsman should carry out the investigations itself or appoint another independent authority to carry out the investigations, rather than instructing the accused authority to investigate itself.

The CoM should:

- Recommend that the Greek Government amend the policy of the Greek Ombudsman, to require that investigations for which it has responsibility as Mechanism for the Investigation of Arbitrary Behaviour have hierarchical, institutional and practical independence from those responsible for the alleged crimes, and are not carried out by the authority that is itself the subject of the accusations.
- Offer the technical assistance of the CoE to the Greek Government in developing the capacity of the Greek Ombudsman to conduct independent and effective investigations into alleged torture.

Incompatibility of Greek law on torture with international law

The CoM, in the decisions of its 1302nd meeting on 7 December 2017, also noted "the establishment of a committee tasked with examining whether the definition of torture in Greek law is compatible

¹⁴ Council of Europe, *Decision of 1302nd Meeting of the Council of Europe Committee of Ministers*, 7 December 2017, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000168076d31b.

¹⁵ Submission of Greek Government to Committee of Ministers, 4 October 2018, [http://hudoc.exec.coe.int/eng?i=DH-DD\(2018\)971F](http://hudoc.exec.coe.int/eng?i=DH-DD(2018)971F), p 2 (translation from French).

with the definition in Article 1 of the UN Convention against Torture”, and asked Greece to keep the CoM informed about further relevant developments.¹⁶

The CoM’s focus on Greece’s definition of torture reflects the ECtHR’s judgment in *Zontul*. The ECtHR in *Zontul* found that the Greek definition of torture is incompatible with Article 3 of the European Convention.¹⁷ The requirement under Greek law that treatment be “planned” or “systematic” for it to constitute torture means that certain acts that are considered torture under the European Convention are, incorrectly, not considered as such under Greek law. An example is the one-off rape of a detainee by a public official, as happened in Mr Zontul’s case.

For the same reason the Greek definition of torture is incompatible with the UN Convention Against Torture. This is well summarised in a letter the Commissioner for Human Rights of the Council of Europe (Commissioner for Human Rights) wrote to the Greek Minister of Justice on 18 April 2017:

“I would thus invite you to overhaul the existing criminal law and practice, and to remedy existing shortcomings, such as the one concerning the definition of torture in Article [(sometimes translated as “Section”)] 137 A §2 of the Criminal Code. As I noted in the report following my 2013 visit to Greece, the above provision defines torture as the “planned” (μεθοδευμένη) [(sometimes translated as “systematic”)] infliction by a public official on a person of severe physical, and other similar forms of pain. This condition though does not exist in the internationally established definition of torture contained in Article 1 of the 1984 Convention against Torture (CAT) that was ratified by Greece in 1988 and, under Article 28§1 of the Greek Constitution, prevails over domestic legislation. Due to the requirement for a planned, systematic character of severe ill-treatment, to date Greek courts have only once, in 2014, convicted a police officer for torturing two Greek national detainees by electric shocks during interrogation. Moreover, the above provision of the criminal code does not include in its ambit torture inflicted at the instigation or with the consent or acquiescence of a public official or a person acting in an official capacity, which is part of the CAT definition of torture. Therefore, I reiterate my call to ensure that the definition of torture contained in the criminal code is fully aligned with the CAT definition.”¹⁸

The UN Committee Against Torture has similarly stated that: “the current [Greek] definition does not comply with the one provided in Article 1 of the Convention [Against Torture]”.¹⁹

The Greek Minister of Justice responded to the Commissioner for Human Rights’ letter, on 28 April 2017, stating:

“Concerning the definition of torture included in art. 137 A of the Penal Code, we have already requested from the Law-Making Committee which has been established for the reform of the Penal Code, to examine the compatibility of the current definition of torture with art. 1 of the UN Convention Against Torture. The Law-Making Committee is comprised of jurists specialized in Criminal Law and Human rights and its work is still in progress.”²⁰

¹⁶ Council of Europe, *Decision of 1302nd Meeting of the Council of Europe Committee of Ministers*, 7 December 2017, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000168076d31b.

¹⁷ ECtHR, *Zontul v Greece*, paras 87-89, citing *Aydin v Turkey*, 25 September 1997, Reports 1997-VI, para 83.

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

¹⁹ Committee Against Torture Concluding Observations on Greece’s Fifth and Sixth Periodic Reports, 27 June 2012, CAT/C/GRC/CO/5-6, para 9.

²⁰ Greek Minister of Justice, *Letter to the Commissioner for Human Rights Ref: 1414-28/04/2017*, 28 April 2017, <https://rm.coe.int/reply-by-mr-stavros-kontonis-minister-of-justice-transparency-human-ri/168070d5ad>.

It was to this information that the CoM referred in the decision of its 1302nd meeting on 7 December 2017.

REDRESS strongly contests Greece's assertions in its 4 October 2018 submission to the CoM that the correction of the Greek law on torture goes beyond Greece's obligation to implement the general measures arising out of the *Makaratzis* group of cases, and that the violations of Article 3 of the European Convention in those cases were never linked to the relevant legislative provisions (page 3). The ECtHR found clearly in its judgment in *Zontul* that the reason the Greek courts incorrectly held that the perpetrators were not guilty of torture was *because* the Greek Criminal Code wrongly required that torture be "planned" (para 87).

REDRESS wrote to the Greek Minister of Justice on 18 June 2018, requesting an update about the progress of the Law-Making Committee in examining the Greek law on torture's compatibility with international law, but never received a response to that letter.

A further incompatibility between the current Greek law on torture and international law is the application of a fifteen-year limitation period to the crime of torture (Greek Criminal Code, Section 111 § 2). REDRESS understands that this would, for example, prevent Greece from bringing further criminal proceedings against the Coastguard officers responsible for Mr Zontul's torture. The ECtHR and the UN Committee Against Torture have made clear that limitation periods are not permissible for the crime of torture.²¹

Greece informed the CoM in its 4 October 2018 submission that the Law-Making Committee that was tasked with examining, among other things, the Greek definition of torture, has submitted draft amendments to the Greek Criminal Code to the Minister for Justice, who will shortly introduce them before Parliament and begin deliberations. Greece did not, however, specify if any amendments have been proposed to the law on torture.

The CoM should:

- Ask the Greek Government whether the Law-Making Committee has proposed any amendments to the Greek Criminal Code to make the Greek definition of torture compatible with international law, and if so, what those amendments are.
- Reiterate to Greece the importance of amending Greek law on torture to make it compatible with the Article 3 of the European Convention and with Article 1 of the UN Convention Against Torture. This should include removing the requirement that torture be "planned" and removing the limitation period for the crime of torture.
- Offer the technical assistance of the CoE to the Greek Government in amending the Greek law on torture.

Insufficiently punitive sanctions for torture and ill-treatment under Greek law

The CoM, in the decisions of its 1302nd meeting on 7 December 2017, also noted "the examination by the authorities of the matter of conversion of custodial sentences imposed for torture to ensure

²¹ ECtHR, *Abdülsamet Yaman v. Turkey* (application no. 32446/96), Judgment, 2 November 2004, para 55; Committee Against Torture, General Comment No.3: Implementation of Article 14 by States Parties (13 December 2012), UN Doc. CAT/C/GC/3, para 38.

that that perpetrators of torture or ill-treatment are proportionately and effectively punished”, and asked Greece to keep the CoM informed about further relevant developments.²²

This issue also reflects the *Zontul* ECtHR judgment, in which the Court found that the sanctions imposed on the main perpetrator – six months' suspended imprisonment, converted into a financial penalty of EUR 792 – were “manifestly disproportionate in view of the seriousness of the treatment inflicted on the applicant. ... [T]he Greek penal system, as applied in the present case, did not have the deterrent effect expected to prevent the commission of the offense complained of by the applicant and failed to adequately remedy the ill-treatment he had suffered.” (Paras 107-109.)

The Commissioner for Human Rights' 18 April 2017 letter outlines that the insufficient severity of sanctions for torture and ill-treatment in Greece is a widespread problem:

“Another major issue of substantive criminal law that I would like to raise with you is the following: I have noted that in recent years Greece, in its efforts to decongest prisons, has amended Article 82 of the Criminal Code and allowed courts to convert custodial sentences (even of five years' imprisonment that may cover felonies such as torture) into pecuniary penalties and community service. It is noteworthy that under the Strasbourg Court's case law and the 2011 Guidelines of the Council of Europe Committee of Ministers on eradicating impunity for serious human rights violations, when serious human rights violations have been proven, the imposition of a suitable penalty should follow. The sentences which are handed out should be effective, proportionate and appropriate to the offence committed. As a consequence, I would call on you to review existing legislation in order to ensure that adequate, dissuasive penalties are always imposed by courts and fully executed in all cases of ill-treatment by law enforcement agents.”²³

The information from Greece to which the CoM was referring in its 1302nd meeting on 7 December 2017 again came from the Minister of Justice's response, on 28 April 2017:

“Regarding the conversion of custodial sentences in cases of torture, I share your concern and we will consider the matter. I would like to assure you that we will not sacrifice justice in the name of prisons' decongestion and we are fully determined to make sure that perpetrators of such serious crimes are proportionately and effectively punished.”²⁴

As with the definition of torture, REDRESS raised this issue with the Greek Minister for Justice in its 18 June 2018 letter, but has not received a response on this issue either. Greece's 4 October 2018 submission to the CoM does not make clear whether the Law-Making Committee's proposed amendments to the Greek Criminal Code include any changes to the sanctions for torture and ill-treatment.

The CoM should:

- Ask the Greek Government whether the Law-Making Committee has proposed any amendments to the Greek law governing sanctions for torture and ill-treatment, and if so, what those amendments are.

²² Council of Europe, *Decision of 1302nd Meeting of the Council of Europe Committee of Ministers*, 7 December 2017, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000168076d31b.

²³ Commissioner for Human Rights, *Letter to the Greek Minister of Justice Ref: CommHR/NM/sf 020-2017*, 18 April 2017, <https://rm.coe.int/168070d55e>.

²⁴ Greek Minister of Justice, *Letter to the Commissioner for Human Rights Ref: 1414-28/04/2017*, 28 April 2017, <https://rm.coe.int/reply-by-mr-stavros-kontonis-minister-of-justice-transparency-human-ri/168070d5ad>.

- Reiterate to Greece the importance of ensuring that sanctions for torture and ill-treatment are sufficiently punitive (i) to be proportionate to the crime committed and (ii) to have the required deterrent effect. This requires custodial sentences, not simply fines, to be imposed in cases of torture.

Systemic importance of the general measures

The importance of implementing the above general measures goes far beyond the case of *Zontul* or the *Makaratzis* group of cases.

The extent of the torture and ill-treatment of migrants in Greece in recent years has been well documented. The UN Committee Against Torture has expressed its concern at “persistent allegations of torture and ill-treatment by law enforcement officials” and “repeated and consistent reports of ill-treatment of undocumented migrants, asylum seekers and Roma by law enforcement officials, including in detention facilities”.²⁵

The CoE Committee for the Prevention of Torture (CPT) received in a 2016 visit to Greece:

“a number of credible allegations of physical ill-treatment of foreign national detainees by police officers notably at Thessaloniki and Petrou Ralli holding facilities, some of which were supported by medical evidence. ... The CPT reiterates its recommendation that the Greek authorities take rigorous action to counter acts of ill-treatment in holding facilities for irregular migrants. ... Determined action is required to tackle the widespread and deep-rooted problem of ill-treatment by the police.”²⁶

The Commissioner for Human Rights’ 18 April 2017 letter to the Greek Minister of Justice stated: “I am very concerned by the fact that I continue to receive alarming information concerning instances of alleged ill-treatment, including torture, by Greek police officers.”

According to REDRESS’s research, since 2016 twenty-five ECtHR cases have been communicated to Greece that involve the alleged death, torture or ill-treatment of refugees and migrants by the Greek authorities. Of those cases, three, involving 35 individual applicants, will examine specifically the alleged failings in investigations that have been conducted by the Greek authorities into the asserted deaths, torture or ill-treatment.

Despite this, REDRESS understands that since 1984 only one case of torture has been successfully investigated and prosecuted in Greece. Even in that one case, the perpetrators were not given a custodial sentence, and only a fine. That case has since been examined by the ECtHR, which ruled, in a similar finding to that in *Zontul*, that Greece’s failure to impose a custodial sentence was a breach of Article 3 of the European Convention, as it failed sufficiently to deter other instances of torture.²⁷

There is therefore a strong need to ensure that the general measures outlined above, relating to the investigation, prosecution and punishment of torture in Greece, are implemented. Doing so will deter and reduce the number of future incidents of torture in Greece, and reduce the number of cases that need to be brought before the ECtHR. It will also ensure that if such incidents do occur,

²⁵ Committee Against Torture Concluding Observations on Greece’s Fifth and Sixth Periodic Reports, 27 June 2012, CAT/C/GRC/CO/5-6, paras 10 and 12.

²⁶ CPT, *Report to the Greek Government on the visits to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 18 April and 19 to 25 July 2016*, 26 September 2017, <https://rm.coe.int/pdf/168074f85d>.

²⁷ ECtHR, *Sidiropoulos et Papakostas v Greece*, Judgment, 25 January 2018, para 99.

those responsible are held accountable and that those who suffer harm are better able to access justice.