

## Greece in Institutional Decline: 60-day update

### Addendum to the Joint Civil Society Submission to the European Commission on the 2024 Rule of Law Report

#### Cross-cutting rule of law issues in Greece

1. On 7 February 2024, the European Parliament (EP) adopted a resolution on the state of the rule of law in Greece,<sup>1</sup> expressing serious concerns in relation to several of the elements raised in our submission of 15 January 2024. These include the lack of effectiveness of judicial investigations, concerns on the independence and effectiveness of the National Transparency Authority (*Εθνική Αρχή Διαφάνειας*, NTA), the use of SLAPPs against journalists not least in the context of the surveillance scandal, the criminalisation of human rights defenders, as well as the unprecedented refusal of the Greek government to engage with the Parliament's DRFMG delegation. Similar concerns have been raised by the EP in its report of 28 February 2024 on the 2023 Rule of Law Report of the Commission.<sup>2</sup>
2. The Greek Supreme Court (*Άρειος Πάγος*) issued Decision 2/2024 on 15 February 2024 in response to the EP resolution. The Court, sitting in Administrative Plenary (*Διοικητική Ολομέλεια*) format, recalled that judicial officials are bound by the rule of law and perform their functions in line with the Constitution. The Decision, adopted by majority, criticises the EP resolution, among others, for making sweeping statements without putting forward evidence and for engaging in impermissible interference in the work of the Member State's prosecution service and courts.<sup>3</sup> The decision has been described as "unprecedented" by the President of the Plenary of Greek Bar Associations.<sup>4</sup> A minority of 13 judges opposed the issuance of the decision on the ground that the Administrative Plenary of the Court has no competence to conduct an assessment of the European Parliament resolution, since the resolution does not constitute a legal issue falling within its competence.
3. In a recent response to the above developments, the Greek Prime Minister stated that the EP resolution does not reflect reality and that "the ultimate judge of the rule of law according at least to the rules of the European family in which we participate is the European Commission, because it is more depoliticised potentially from the European Parliament..."<sup>5</sup>

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<sup>1</sup> European Parliament, *Rule of Law and media freedom in Greece*, P9\_TA(2024)0069, 7 February 2024.

<sup>2</sup> European Parliament, *Report on the Commission's 2023 Rule of Law Report*, P9\_TA(2024)0108, 28 February 2024.

<sup>3</sup> Supreme Court, Administrative Plenary Decision 2/2024, 15 February 2024, [URL](#).

<sup>4</sup> Bar Association of Athens, 'Δικαστική ανεξαρτησία – Τα όρια της κριτικής στη Δικαιοσύνη', 23 February 2024, [URL](#).

<sup>5</sup> Prime Minister, 'Συζήτηση Κ. Μητσοτάκη με τον Αλέξη Παπαχελά και τον Κώστα Κωστή | «Μεταπολίτευση. 50 χρόνια μετά»', 29 February 2024, [URL](#).

## Surveillance and use of illegal spyware

4. The European Court of Human Rights (ECtHR) published on 29 January 2024 its communication of the case of *Koukakis v. Greece* App No 37659/22 against the Greek government. The case was brought by journalist Thanasis Koukakis and alleges a breach of his right to private life and of his right to an effective remedy on account of his surveillance by the National Intelligence Service (Εθνική Υπηρεσία Πληροφοριών, EYP) and infection of his phone with Predator software, and of the prohibition on receiving information on the reasons for his surveillance.<sup>6</sup>
5. Media reported on 19 February 2024 that an EYP official has lodged a criminal complaint against Grigoris Dimitriadis, the nephew of and former General Secretary to the Prime Minister, and Panagiotis Kontoleon, former Director of EYP, alleging use of Predator spyware against her in November 2021. The complainant was informed of the infection of her phone by Predator spyware by the Data Protection Authority (Αρχή Προστασίας Δεδομένων Προσωπικού Χαρακτήρα, DPA).<sup>7</sup>
6. According to recent media reports, no cross-checking of whether the 92 Predator targets identified by the DPA have also been under EYP surveillance has been carried out to date, over four months since the Supreme Court Prosecutor ordered the transfer of the “Predatorgate” investigation from the Athens Public Prosecutor’s office to the Supreme Court. In response to a February 2024 request by journalist Thanasis Koukakis, the Hellenic Authority for Communication Security and Privacy (Αρχή Διασφάλισης Απορρήτου Επικοινωνιών, ADAE) stated in early March 2024 that competence for such an action lies with the Supreme Court Prosecutor’s office.<sup>8</sup>

## Interference with and intimidation of constitutionally protected independent authorities

7. On 20 February 2024, media reported that the Public Prosecutor of Athens archived the case against two members of ADAE who had been summoned in October 2023 as suspects for the offence of leaking sensitive state secrets to journalist Thanasis Koukakis.<sup>9</sup>

## Enforced disappearance of people seeking asylum & investigation into ill-treatment by law enforcement bodies

8. On 16 January 2024, the ECtHR delivered its ruling in the *Alkhatib v. Greece* App No 3566/16 case concerning the death of a refugee following Coast Guard use of firearms directly at the engine of a boat carrying refugees off the coast of Pserimos island. The Court condemned Greece for violation of Article 2 ECHR, corresponding to Article 2 of the Charter, regarding both the disproportionate use of force by Coast Guard officials and the ineffective investigation into the incident by the Naval Court Prosecutor. Procedural deficiencies contravening the right to life included standardised witness testimonies corresponding to the Coast Guard’s accounts and

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<sup>6</sup> ECtHR, *Koukakis v. Greece* App No 37659/22, [URL](#).

<sup>7</sup> in.gr, ‘Αποκάλυψη: Μήνυση κατά Γ. Δημητριάδη και Π. Κοντολέοντα από στέλεχος της ΕΥΠ θύμα του Predator!’, 19 February 2024, [URL](#).

<sup>8</sup> Kathimerini, ‘Request to cross-check lists of surveillance targets pending’, 9 March 2024, [URL](#); To Vima, ‘Predator: Η «χαμένη» λίστα των 92 στόχων του’, 10 March 2024, [URL](#).

<sup>9</sup> Kathimerini, ‘Prosecutor shelves probe into ADAE members over alleged leaks’, 20 February 2024, [URL](#).

failure to examine medico-legal reports.<sup>10</sup> Greece has previously been condemned for breaching the right to life on similar grounds in *Safi v. Greece* App No 5418/15 relating to the Farmakonisi shipwreck.

9. On 24 January 2024, the National Commission for Human Rights released the English version of the latest annual report of its Recording Mechanism of Incidents of Informal Forced Returns, containing recorded testimonies of about 50 incidents of informal forced returns.<sup>11</sup>
10. The NTA responded on 25 January 2024 to the HIAS Greece request for statistics on its handling of complaints relating to push backs of refugees and migrants, stating that it holds no documents containing such statistical information.<sup>12</sup> On 30 January 2024, the NTA issued a follow up response in which it copied the DG HOME Task Force Migration Management. Its reply reads as follows:

“NTA up until now has completed four (4) audits and investigations on specific reports and publications. The aforementioned Reports have been communicated to the competent Judicial National and International Authorities. In addition, it has evaluated 194 specific reports and publications regarding incidents allegedly occurred in the context of management of migration flows and of the country’s borders by the competent bodies. Three (3) Audit Orders have been issued, for which Audits are underway. There have not been any alleged incidents for which no further development took place at investigation level.”<sup>13</sup>

## Justice system

11. The Union of Greek Bar Associations expressed serious concerns at the Supreme Court Prosecutor’s instructions / circular addressed to prosecution and interrogation services investigating the Tempi train crash. In a statement issued on 1 March 2024, it highlighted that the issuance of such instructions is impermissible and problematic.<sup>14</sup>
12. Opposition parties participating in the parliamentary inquiry committee set up in relation to the Tempi train crash have denounced the ineffectiveness of investigations, including failure to summon key witnesses to testify.<sup>15</sup> Similar concerns had been raised in the parliamentary inquiry into the surveillance scandal.

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<sup>10</sup> RSA, ‘Greece condemned today by the European Court of Human Rights for breaching Article 2 ECHR in fatal Coast Guard shooting of a refugee (Pserimos, Alkhatib and others v. Greece)’, 16 January 2024, [URL](#).

<sup>11</sup> National Commission for Human Rights, ‘Publication of the Annual Report 2022 of the Recording Mechanism of Incidents of Informal Forced Returns’, 24 January 2024, [URL](#).

<sup>12</sup> NTA, *Απάντηση σε έγγραφό σας*, 3580/2024, 25 January 2024.

<sup>13</sup> NTA, *Παροχή στοιχείων*, 4284/2024, 30 January 2024 (Unofficial translation).

<sup>14</sup> Union of Greek Bar Associations, ‘Απάντηση της Ολομέλειας στην ανακοίνωση της Ένωσης Εισαγγελέων Ελλάδος σχετικά με την κριτική που ασκήθηκε για την παρέμβαση της Εισαγγελέως του Αρείου Πάγου στην ανάκριση που διενεργείται για το έγκλημα των Τεμπών’, 1 March 2024, [URL](#).

<sup>15</sup> Kathimerini, ‘Opposition walks out of parliamentary committee probing Tempe train tragedy’, 20 February 2024, [URL](#).

13. The latest reform of the Criminal Procedure Code introduced by L 5090/2024 lays down an exception from the duty to appear in the criminal trial for police officers and other interrogating officials e.g. Coast Guard officers who have already given a statement. Their written statements are to be read out during trial.<sup>16</sup>

### Anti-corruption framework

14. Transparency International downgraded Greece's transparency ranking for the first time in a decade, in its latest Corruption Perceptions Index (CPI) released on 30 January 2024. "Greece (49) is facing a rule of law crisis that is damaging the country's gains in the CPI over the past decade. The fallout from the government's alleged illegal wiretapping of journalists and opposition politicians, attacks on press freedom, and weak judicial independence have contributed to the sharpest decline in the rule of law in the EU."<sup>17</sup>
15. **Political party financing:** In addition to the information provided in our submission, we would like to point out that the issue of transparency in political party funding was also highlighted by GRECO in the context of the Third Evaluation Round (Theme II),<sup>18</sup> resulting in 16 recommendations made to Greece. Although the Third Round Compliance procedure concerning Greece has been completed, we still have some reservations as to whether the current legislation and practice actually ensures transparency in political party financing and whether Greece is actually substantially implementing the recommendations made to the country by Greco. Specifically:
- 15.1. Recommendation no. viii reads, "*to increase considerably the transparency of the financing of election campaigns, in particular by (i) making apparent the financial support by political parties and coalitions to candidates in local and regional elections and (ii) by introducing reporting and publication requirements for all election candidates or lists of candidates at all levels (paragraph 119)*".<sup>19</sup> However, the election expenses and revenues of MPs and parliamentary candidates are still not subject to publication<sup>20</sup>. The closest thing available to statements publicising the financing of elected representatives that the Audit Committee posts on its website is an annual table of financing of elected MPs and MEPs by natural persons above €3,000.00.<sup>21</sup> This raises serious concerns around the implementation of this recommendation.

<sup>16</sup> Article 215(5) Criminal Procedure Code, inserted by Article 78 L 5090/2024.

<sup>17</sup> Transparency International, 'CPI 2023 for Western Europe & EU: Rule of law and political integrity threats undermine action against corruption', 30 January 2024, [URL](#).

<sup>18</sup> GRECO, *Evaluation Report on Greece on Transparency of party funding (Theme II)*, Greco Eval III Rep (2009) 9E, [URL](#); *Compliance Report on Greece*, Greco RC-III (2012) 10E, [URL](#); *Interim Compliance Report on Greece*, Greco RC-III (2013) 13E, [URL](#); *Second Interim Compliance Report on Greece*, Greco RC-III (2014) 8E, [URL](#); *Third Interim Compliance Report on Greece*, Greco RC-III (2015) 7E, [URL](#); *Second Compliance Report on Greece*, GrecoRC3(2016)14, [URL](#); *Re-Assessment of Greece's compliance with Recommendation ii(i) "Transparency of Party Funding"*, GrecoRC3(2017)14, [URL](#).

<sup>19</sup> GRECO, *Evaluation Report on Greece on Transparency of party funding (Theme II)*, Greco Eval III Rep (2009) 9E, par. 132, [URL](#). See also paras 62, 118 and 119 of the abovementioned report.

<sup>20</sup> Vouliwatch's request of 30 March 2023 for access to this information has not been answered to date.

<sup>21</sup> See the tables posted by the Committee for the years (financial years) 2018-2021 under "Support from natural persons"«Ενίσχυση από φυσικά πρόσωπα», [URL](#).

- 15.2. Recommendation no. xiii reads,“(i) to ensure the publication of and easy access by the public to the reports of the Control Committee, including the appendices containing the reports of the chartered auditors and (ii) to introduce the possibility for members of the Control Committee to express and publish dissenting or minority opinions on the Committee’s report (paragraph 125)”. The findings of the audits and the Committee’s decisions are not published in full on the Committee’s website<sup>22</sup> and the information contained in the annual reports is incomplete and does not include the auditors’ reports.<sup>23</sup> This raises serious concerns as to whether Recommendation no xiii is being implemented in full.

## Media freedom and pluralism

16. **SLAPPs:** The SLAPP case brought by Grigoris Dimitriadis, the nephew of and former General Secretary to the Prime Minister, against journalists including Reporters United for their work on the surveillance scandal was heard by the Civil Court of Athens on 25 January 2024.<sup>24</sup> The delivery of the judgment is pending.
17. A report published by International Press Institute (IPI) on 29 January 2024, analyses media capture in Greece,<sup>25</sup> while the report of the Media Freedom Rapid Response (MFRR)<sup>26</sup> platform mission report on Greece reiterates concerns about the deteriorating state of media freedom in the country.<sup>27</sup>

## Other institutional issues related to checks and balances

### The process of preparing and enacting laws

18. On 23 February 2024, L 5090/2024 was passed, amending once again the Criminal Code and the Code of Criminal Procedure. As mentioned in our submission, the content of the draft under discussion had already been subject to extensive criticism during the public consultation process and in fact during the entire legislative passage of the law.<sup>28</sup> The failure to establish a

<sup>22</sup> See, inter alia, the lack of records in the audit findings field («απολογικά πορίσματα ελέγχων») [URL](#).

<sup>23</sup> See the archives of the Committee’s reports for the years 2016-2022 posted under “Progress Reports” («Εκθέσεις Πεπραγμένων»), [URL](#).

<sup>24</sup> For analysis, Reporters United, ‘Πώς η αγωγή Δημητριάδη μετατράπηκε σε δίκη του Predator Gate’, 5 February 2024, [URL](#).

<sup>25</sup> IPI, *Media Capture in Greece: Entanglement of the fourth estate*, January 2024, [URL](#).

<sup>26</sup> MFRR, *Stemming the tide of Greek media freedom decline*, January 2024, [URL](#).

<sup>27</sup> Note also BBC, *Reporting Greece*, 13 February 2024, [URL](#).

<sup>28</sup> *Inter alia*, Hellenic Parliament, 2<sup>η</sup> Συνεδρίαση Διαρκούς Επιτροπής Δημόσιας Διοίκησης, Δημόσιας Τάξης και Δικαιοσύνης, 16 February 2023, [URL](#); Έκθεση Επιστημονικής Υπηρεσίας της Βουλής επί του Νομοσχεδίου «Παρεμβάσεις στον Ποινικό Κώδικα και τον Κώδικα Ποινικής Δικονομίας για την επιτάχυνση και την ποιοτική αναβάθμιση της ποινικής δίκης - Εκσυγχρονισμός του νομοθετικού πλαισίου για την πρόληψη και την καταπολέμηση της ενδοοικογενειακής βίας», 20 February 2024, [URL](#); HLHR, *Γραπτό Υπόμνημα σχετικά με το σχέδιο νόμου για τον Ποινικό Κώδικα και τον Κώδικα Ποινικής Δικονομίας*, 16 February 2024, [URL](#); Ελληνική Εταιρεία Μελέτης του Εγκλήματος και του Κοινωνικού Ελέγχου, *Οι ποινικοί κώδικες στο εκτελεστικό απόσπασμα*, [URL](#); Υπόμνημα της ΕΕΜΕΚΕ προς τη Διαρκή Επιτροπή Δημόσιας Διοίκησης, Δημόσιας Τάξης και Δικαιοσύνης της Βουλής για το ΣχΝ «Παρεμβάσεις στον Ποινικό Κώδικα και τον Κώδικα Ποινικής Δικονομίας» (Ν.5090/2024), *Εγκληματολόγοι*, τεύχος 12, February 2024, [URL](#); Ελληνική Εταιρεία Ποινικού Δικαίου και Ένωση Ελλήνων Ποινικολόγων, *Δημόσια*

legislative/drafting committee (νομοπαρασκευαστική επιτροπή), the incompatibility of the provisions of the law with the Constitution, the ECHR, supra-legislative rules, fundamental principles of criminal law and modern scientific / research data, as well as the fact that these changes serve purposes other than those announced in the bill, were some of the grounds of this criticism.

19. Indicatively, major concerns were expressed regarding:

- 19.1. The provision for the ancillary sentence of confiscation of property for the offence of arson in Article 43 L 5090/2024 and its compatibility with Article 17 of the Constitution;
- 19.2. The extension of the offences for which a custodial sentence may be imposed on minors under Article 29 L 5090/2024 and its compatibility with the principles governing juvenile criminal law and those referred to in the International Convention on the Rights of the Child;
- 19.3. The provision for the trial of cases at first and second instance by a court of the same level, the Three-Member Felony Court of Appeal (Τριμελές Εφετείο Κακούργημάτων) and their compatibility with supranational rules, such as the Protocol 7 ECHR;
- 19.4. The changes concerning the Mixed Jury Courts (Μικτά Ορκωτά Δικαστήρια) and their compatibility with Article 97 of the Constitution;
- 19.5. The provisions on the exemption and/or optional summons and/or appearance of persons as witnesses under Articles 78 and 112 L 5090/2024 and their compatibility with the fundamental right of the accused to examine the prosecution witnesses.

20. Finally, concerns were expressed about the general spirit of punitiveness, the increase in sentences and the general tightening of the framework for the enforcement of sentences, which was considered *inter alia* to lead to an increase in the prison population, which already suffers from overcrowding and constantly deteriorating conditions of detention.

### The enabling framework for civil society

21. **Criminalisation of human rights defenders:** Volunteers of the NGO ERCI were acquitted of misdemeanour charges by the Court of Appeal of Northern Aegean on 30 January 2024, six years

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Συζήτηση με θέμα «Το νομοσχέδιο του Υπουργείου Δικαιοσύνης: Αναμόρφωση ή παραμόρφωση του ποινικού συστήματος;», [URL](#); Εναλλακτική Παρέμβαση Δικηγόρων Αθήνας, Ημερίδα: Οι νέες αλλαγές στον ΠΚ και τον ΚΠΔ: Μια ολοκληρωτική αντιμεταρρύθμιση, [URL](#); Ένωση Ελλήνων Ποινικολόγων, Παρατηρήσεις στο σ/ν του Υπουργείου Δικαιοσύνης «Παρεμβάσεις στον Ποινικό Κώδικα και στον Κώδικα Ποινικής Δικονομίας», [URL](#); Ertnews, 'Βουλή – Τροποποιήσεις στον ποινικό κώδικα: Μαραθώνια συνεδρίαση της αρμόδιας Επιτροπής και διαφωνία μεταξύ των φορέων', 17 February 2024, [URL](#); Efsyn, 'Οι «ολίγον κόκκινες» εκθέσεις των Επιστημονικών Επιτροπών για το Νομοσχέδιο Φλωρίδη', 21 February 2024, [URL](#); Antimolia, 'Κοσμάτος Κ., Η στέρηση της ελευθερίας των ανηλικών: η εξαίρεση που μπορεί να γίνει κανόνας', 15 January 2024, [URL](#); Athens Law School, 'Ανακοίνωση για το νομοσχέδιο τροποποίησης ΠΚ και ΚΠΔ', [URL](#); Σεβαστίδης Χρ. et. al, Παρατηρήσεις στο Σχέδιο Νόμου για τροποποίηση των Ποινικών Κωδίκων, [URL](#); Ombudsman, Παρατηρήσεις του Συνηγόρου του Πολίτη επί του σχεδίου νόμου «Παρεμβάσεις στον Ποινικό Κώδικα και τον Κώδικα Ποινικής Δικονομίας για την επιτάχυνση και την ποιοτική αναβάθμιση της ποινικής δίκης-Εκσυγχρονισμός του νομοθετικού πλαισίου για την πρόληψη και την καταπολέμηση της ενδοοικογενειακής βίας», [URL](#); Ψήφισμα Μελών ΔΕΠ για το Σχέδιο Νόμου του Υπουργείου Δικαιοσύνης για τον ΠΚ και τον ΚΠΔ, [URL](#).

after their prosecution.<sup>29</sup> Felony charges remain in place, while no hearing has been scheduled yet.

22. **Registration requirements for NGOs working with refugees and migrants:** The Ministry of Migration and Asylum refrained from providing data in its 8 February 2024 response to the RSA request of 6 November 2023 for statistics on the operation of its NGO Registry, including the number of pending and rejected applications for registration of organisations and natural persons, as well as the number of suspensions from the registries of said Ministry.<sup>30</sup> The absence of such statistics was flagged at a 12 February 2024 meeting of civil society organisations and the Ministry's General Secretariat for Reception, attended by the DG HOME Task Force Migration Management. In a March 2024 meeting with civil society organisations, DG HOME confirmed that it has no access to these figures either.<sup>31</sup>

**Athens, 11 March 2024**

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<sup>29</sup> Lesvos News, 'Μεγάλη νίκη της αλληλεγγύης στη Μυτιλήνη! ΑΘΩΟΙ οι 16 εθελοντές της ΜΚΟ ERCI', 30 January 2024, [URL](#).

<sup>30</sup> Ministry of Migration and Asylum, 'Αίτημα πληροφόρησης RSA -Στατιστικά λειτουργίας Μητρώου ΜΚΟ και διαδικασιών ενώπιον του Υπεύθυνου Θεμελιωδών Δικαιωμάτων του Υπουργείου Μετανάστευσης και Ασύλου', 48011/2024, 8 February 2024.

<sup>31</sup> Meeting minutes of the Legal Aid Working Group CEAS Sub-Working Group, 4 March 2024, Item 2.