



GREEK HELSINKI MONITOR (GHM)

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**Presentation on the execution of
*Sakir – Gjikondi group of cases v. Greece (Application No. 48475/09)***

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A. Individual measures

1. This group of two cases concerns ineffective investigations into assaults against immigrants which resulted in death or injury in which the authorities failed to examine the existence of a racist motive. As representative of the applicants in *Gjikondi v. Greece* (the “death case”), **GHM** asked in a communication three things that **Greece** explicitly or implicitly rejected in its reply.
2. **Greece** rejected the reopening of the domestic procedures, thus rejecting the possibility to sanction those judicial and police officials responsible for the unlawful aspects of the domestic investigations that led to the violation of Article 2 in its procedural limb exactly because of the absence of effective investigation. The applicants consider that such impunity is a partial failure in the execution of the judgment.
3. **Greece** rejected also the possibility to request a partial annulment of the flawed domestic judgment for the benefit of the law, as “*regrettable denaturation of this extraordinary remedy.*” **Greece** however failed to address the recent annulment of the domestic judgment for the benefit of the law for the execution of *Chowdury and others v. Greece* invoked by **GHM**. In such annulment, the **Court of Cassation** would rule on the procedural aspects of the domestic judgment (for example the holding of the trial without the summoning to it of the applicants which violated the fundamental aspects of a fair trial), as well as perhaps on the failure of the domestic court to at least highlight the racist aspect of the crime.
4. Finally, **Greece** did not address the applicants’ request for a written apology as a measure of moral compensation that has been suggested by the state, and welcomed by the **CM**, in the framework of the execution of *Makaratzis v. Greece* group of cases when procedural failures cannot be investigated again because of prescription, which is applicable also in *Gjikondi and others v. Greece*.

B. General measures

5. The **Committee of Ministers** asked information about the implementation of the new anti-racist legislation, in particular whether racist motivation is examined in the early stages of criminal proceedings; as well as information and data about the number of reports of hate-motivated crimes as compared to the number of cases in which criminal charges were brought and those in which the perpetrators were punished.
6. **Greece** objected to the critical references provided by **GHM** on the new anti-racism legislation, which were though criticism included in the recommendations by **ECRI**, **UN CERD** and **UN HRCttee**.
7. **Greece** also objected to the information provided by **GHM** on hate speech cases and more generally on racism and racial discrimination. However, the data on “*complaints investigated as possible racist crimes*” provided by **Greece** in their very large majority concern complaints filed by **GHM**. The information, provided by both **Greece** and **GHM**, in any case show that in 2015-2019 some 800 complaints were filed but there were only 19 convictions in 2015-2017. This confirms the concern of **ECRI**, **UN CERD** and **UN HRCttee** that hate crimes are inadequately prosecuted in **Greece**.

8. It is regrettable that in its reply to the **GHM** communication, **Greece** asks the **Committee of Ministers** to “dismiss the *GHM* communication ... and its recommendations...as susceptible to disorient it” [sic]. It is unfortunate that **Greece** claims therein that **GHM** lacks complete knowledge of the court files opened on the basis of its own complaints on racist crimes, which is evidently false; that **GHM**’s perception of these cases as racist lacks “neutrality;” and that **GHM** lacks the knowledge and competence of judges to evaluate those cases. It is also at least discourteous that **Greece** refused to provide information on the 19 judgments with convictions for hate crimes the state invoked.
9. **GHM** is therefore forced to recall that it has seen scores of its applications to the **ECtHR** leading to the finding of violations often by Greek judges with the knowledge and competence invoked by **Greece**, including in the present *Gjikondi* case. Moreover, coincidentally, on 25 October 2019, the **Greek Government Agent for the ECtHR and President of the Legal Council of State Ioannis-Constantinos Halkias**, publicly praised **GHM**: “Greek state agencies and services involved must cooperate closer with the Council of Europe monitoring bodies or with independent bodies dealing with human rights, such as the National Commission for Human Rights or the Greek Helsinki Monitor since many times their views are closer to the case law of the ECtHR.”

Recommendations

10. The **Committee of Ministers** is requested to ask **Greece** to:

A. Individual measures concerning the Gjikondi case

1. Reopen the three other procedures for which the applicants alleged violations, some of a felony criminal nature, by police and judicial officials in various aspects of the investigations.
2. Request from the **Prosecutor of the Court of Cassation** to move for the annulment in part of the acquittal judgment for the benefit of the law.
3. Offer the relatives of the victim a written apology as a measure of moral compensation.

B. General measures

1. Amend anti-racism Law 927/79 so as to implement recommendations by **ECRI**, **UN HRCttee** and **UN CERD** to criminalize racist insults and defamation, and the public dissemination, public distribution or production or storage of racist material.
2. Intensify its measures to strengthen the application of anti-racism provisions, including through regular mandatory pre-service and in-service training, especially among the police, prosecutors, judiciary and lawyers, on the legal framework governing anti-discrimination and on the investigation of complaints of hate crimes.
3. Improve the data collection so that it reflects accurately the existing situation including an analysis by Prosecutor Offices and by nature of the charges pressed and of the crimes for which acquittals or convictions have been issued, as well as specify if they concern first instance judgments or are final upheld on appeal.
4. Cooperate with civil society organizations that file complaints for alleged racist crimes both in data collection and with making them members of related working groups or the two national commissions for human rights and against racism (Note: **GHM** is not a member in either), including by promptly providing them with related information they have on file.

5. Request from the **Prosecutor of the Court of Cassation** to seek available remedies against archiving decisions or judgments that lead to non-prosecution or acquittals for manifestly evident racist crimes, as well as against the failure to invoke a racist motive when it is manifestly evident, even in convictions.
6. Set a 2020 deadline for the submission of information regarding the implementation of the above recommendations, taking into consideration the anticipated **ECRI** contact visit in 2020 for the preparation of **ECRI**'s 6th cycle country monitoring report on **Greece**.