



To: Dr. Michael O'Flaherty, Council of Europe Commissioner for Human Rights (CoE)

Title: Urgent Concerns Regarding Privacy and Data Protection in Greece

13.08.2024
Athens, Greece

Dear Council of Europe Commissioner for Human Rights, Dr. Michael O'Flaherty,

My name is Eleftherios Chelioudakis, and I serve as the Executive Director of the Greek Civil Society Organization, Homo Digitalis, which is dedicated to the protection of human rights in the digital age. On behalf of our Board of Directors, I am writing to express our grave concerns regarding the state of privacy and data protection in Greece. The right to personal data protection is integral to the rights protected under Article 8 of the ECHR, which guarantees respect for private and family life, home, and correspondence, and sets out the conditions under which this right may be restricted.

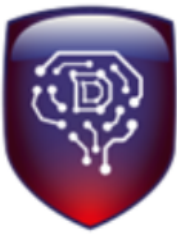
We wish to draw your attention to the following issues:

- A. The imminent adoption of a Presidential Decree in Greece permitting state authorities to procure spyware.
- B. The deteriorating condition of independent supervisory authorities in Greece, plagued by power struggles, understaffing, and financial constraints.
- C. The latest developments in the ongoing PREDATOR scandal in Greece, which leaves critical questions unanswered regarding the surveillance of journalists, politicians, and lawyers through illegal means.

A. The Imminent Adoption of a Presidential Decree Permitting State Authorities to Procure Spyware

In December 2022, Law 5002/2022 mandated the issuance of a Presidential Decree within three months to define the conditions under which state authorities may procure spyware. This law was passed amid the PREDATOR spyware scandal in Greece, seemingly to legitimize the use of spyware by public authorities.

Despite the deadline passing without the issuance of the decree, recent publications and statements by government spokesperson Mr. Pavlos Marinakis ([in.gr, July 2024](#)) indicate that a draft is being prepared. However, no public document or announcement suggests that the Greek Government has sought consultation with the Hellenic Authority for Communication Security and Privacy (ADAE) or the Hellenic Data Protection Authority (HDPa), as required by Article 6 of Law 3115/2003 and Articles 9, 43, and 67 of Law



4624/2019. Furthermore, there has been no consultation with the Greek National Commission for Human Rights (GNCHR), domestic academic institutions, or Civil Society organizations, despite their expertise in related challenges.

In a request submitted by Homo Digitalis on July 30, 2024, to the Presidents of HDPa and ADAE ([Homo Digitalis, 2024a](#)), both authorities confirmed that the Greek Government did not request consultation, sidelining their constitutionally mandated powers ([Homo Digitalis, 2024b](#)).

This lack of transparency and consultation, coupled with the delayed preparation of the decree, raises significant public concerns, particularly among professionals whose communication confidentiality is vital to democracy, as underscored by European Court of Human Rights (ECtHR) case law (e.g., *Telegraaf Media Nederland Landelijke Media B.V. and Others v. the Netherlands*, *Big Brother Watch and Others v. the United Kingdom*, *Halet v. Luxembourg*, and *Michaud v. France*).

Homo Digitalis believes there is a serious risk that the provisions of this draft decree may not meet the standards set by the Council of Europe, particularly under the European Convention on Human Rights (ECHR) and Convention 108, and may violate Articles 9A, 14, and 19 of the Greek Constitution.

B. The Deteriorating Condition of Independent Supervisory Authorities in Greece

B.1. Power Struggles:

The Hellenic Authority for Communication Security and Privacy (ADAE) and the Hellenic Data Protection Authority (HDPa) face significant obstacles in fulfilling their mandates.

Notably, the HDPa has been stripped of its longstanding powers to oversee the National Intelligence Service of Greece (EYP). Since 1997 (Article 19 of Law 2472/1997), the HDPa was authorized to investigate data protection matters related to EYP's surveillance activities. However, in 2019, Law 4624/2019 (Article 10, para.5) excluded the HDPa from such supervisory duties, conflicting with its constitutional mandate and ECtHR case law. Additionally, Greece has yet to ratify the Council of Europe's Convention 108 Additional Protocol (ETS No. 181) and the Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS No. 223), both of which establish higher standards for data protection authorities than those currently in force in Greece.

Regarding ADAE, the European Parliament highlighted in its report ([European Parliament, 2023](#)) that the Greek Government attacked ADAE and its President for investigating the PREDATOR scandal, accusing ADAE's President, Mr. Rammos, of 'activism' and 'overstepping' his mandate. Furthermore, Greece's Chief Prosecutor, Mr. Dogiakos, issued an opinion on January 10, 2023, ruling that ADAE cannot investigate telecommunications records to examine the lifting of communication confidentiality.



This opinion, contradicting previous Attorney General opinions, threatened ADAE's independence and sought to prevent it from conducting investigations.

B.2. Understaffing & Financial Constraints:

Both ADAE and HDPa face severe capacity challenges due to chronic understaffing and financial constraints. According to HDPa's latest annual report, the Authority faces acute operational issues, including inadequate office accommodation and the inability to house a large part of its services. The HDPa also highlighted that the growing volume of cases strains its resources, exacerbated by severe understaffing and budget cuts. The HDPa's active staff is only 50, and its budget was reduced by 15% in 2023 ([Hellenic Data Protection Authority, 2023](#)). A recent European Commission report indicated that HDPa is the only data protection authority in the EU to experience a budget decrease ([European Commission, 2024](#)).

ADAE faces similar challenges. Its latest annual report lists only 54 active staff positions and a modest budget of €2,106,007. Understaffing and budgetary constraints are major factors delaying ADAE's ability to fulfill its mission according to its annual report's text ([Hellenic Authority for Communication Security and Privacy, 2023](#)).

C. The Latest Developments in the Ongoing PREDATOR Scandal in Greece

Journalists from national outlets such as inside.story and Reporters United, as well as international media like POLITICO, have highlighted the serious challenges to democracy and the rule of law in Greece posed by the PREDATOR scandal.

In a 300-page report, Deputy Prosecutor of the Supreme Court, Achilles Zisis, concluded that a series of controversial PREDATOR hacks were coincidental to state surveillance operations, absolving state services and officials from responsibility. This report was submitted to Prosecutor Georgia Adeilini, who, on July 30, 2024, concluded that there was no evidence linking politicians or state services to the purchase or use of the illegal PREDATOR software ([Politico, 2024b](#)). As a result, Supreme Court prosecutors will only charge four representatives from the companies that sold PREDATOR, with the alleged offenses being misdemeanors ([Politico, 2024a](#)).

POLITICO reported that some legal experts criticized the findings, accusing the prosecutor of leaving several leads unexplored and failing to consult victims sufficiently. Attorney Zacharias Kesses, representing journalist Thanasis Koukakis, a victim of both spyware and state surveillance, called the investigation "incomplete and superficial," arguing that serious felonies involving hacks of top ministers, political, and military leaders were not properly examined ([Politico, 2024b](#)). Nikos Alivizatos, Professor Emeritus of Constitutional Law at Athens University, added that Zisis' findings "disappointed all of us who want to believe in the integrity of the Greek justice system" ([Politico, 2024b](#)).

Global media watchdog Reporters sans frontières (RSF) expressed "regret" over the prosecutor's decision, while former Greek MEP and PASOK leader Androulakis, the first



publicly revealed victim of the scandal, vowed to continue defending the rule of law ([Politico. 2024a](#)).

These developments contradict the recommendations of the Council of Europe's Parliamentary Assembly (PACE). In its December 2023 report, PACE's Committee on Legal Affairs and Human Rights urged Greece to inform the Council of Europe and the Venice Commission about the use of Predator and similar spyware, to conduct effective, independent, and prompt investigations into all confirmed and alleged cases of abuse, to provide sufficient redress to victims, and to refrain from using blanket secrecy to deny oversight mechanisms and victims access to information. PACE also called for adequate sanctions, whether criminal or administrative, in cases of abuse ([Council of Europe, PACE 2023](#)).

Homo Digitalis believes that the ongoing lack of answers from prosecutors investigating the use of PREDATOR spyware has deepened public mistrust and despair over privacy and data protection in Greece. Despite evidence that high-ranking government officials, including members of the cabinet and top military officers, were targeted, there is little interest among them in pursuing further investigations. Moreover, opposition politicians, journalists probing financial scandals, and international corporate officials were also victims of this invasive surveillance. Yet, the prosecutors have been unable to thoroughly investigate Intellexa, the private company behind PREDATOR, leaving critical questions about who was contracting with them unanswered.

Considering the above, Homo Digitalis urges you:

- To give full and close attention to the situation in Greece,
- To take into account the facts presented above and urgently request further information and clarifications from Greek authorities,
- To examine the situation in Greece and take necessary steps to identify any shortcomings in the law and practices concerning human rights abuses, and
- To assist in strengthening the activities of national supervisory institutions and other human rights structures in Greece.

Sincerely,

The Board of Directors of Homo Digitalis